

Friday, 17 June 2022

## **PLANNING COMMITTEE**

A meeting of **Planning Committee** will be held on

**Monday, 27 June 2022**

commencing at **5.30 pm**

The meeting will be held in the Brixham Theatre, Brixham Town Hall, New Road, Brixham, TQ5 8TA - this will be a hybrid meeting and attendees can also join via Zoom

Join Zoom Meeting

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### **Members of the Committee**

Councillor Pentney (Chairman)

Councillor Dart

Councillor Barbara Lewis

Councillor Dudley (Vice-Chair)

Councillor Manning

Councillor Hill

Councillor Mills

Councillor Kennedy

Councillor Jacqueline Thomas

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# PLANNING COMMITTEE AGENDA

## 1. Apologies for absence

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

## 2. Disclosure of Interests

- (a) To receive declarations of non pecuniary interests in respect of items on this agenda.

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda.

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

## 3. Land at Upton Manor Farm Camp Site, St Mary's Road, Brixham (Pages 4 - 76) TQ5 9QH - P/2021/0890

To consider an application for the construction of 130 residential dwellings with access roads, infrastructure and public open space in outline, the proposal includes the demolition of existing buildings on the site.

## 4. Public speaking

If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.

We are trialling hybrid meeting arrangements to give all attendees the opportunity to either attend the meeting in person or to attend the meeting remotely via Zoom. If you would like to attend the meeting remotely to speak you will be provided with a Zoom link to join the meeting. (The link is also published on the first page of this agenda.) We also ask that you provide a copy of your speech to [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk), before 11 am on the day of the

meeting, so that the Clerk will be able to continue to read out your speech if you lose connection or cannot be heard in the physical meeting.

Councillors who are not members of the Planning Committee will also be able to join the meeting via Zoom and must use their raise hand function to declare any interests.

**5. Site visits**

If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 22 June 2022. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

**Meeting Attendance**

Please note that whilst the Council is no longer implementing Covid-19 secure arrangements attendees are encouraged to sit with space in between other people. Windows will be kept open to ensure good ventilation and therefore attendees are recommended to wear suitable clothing.

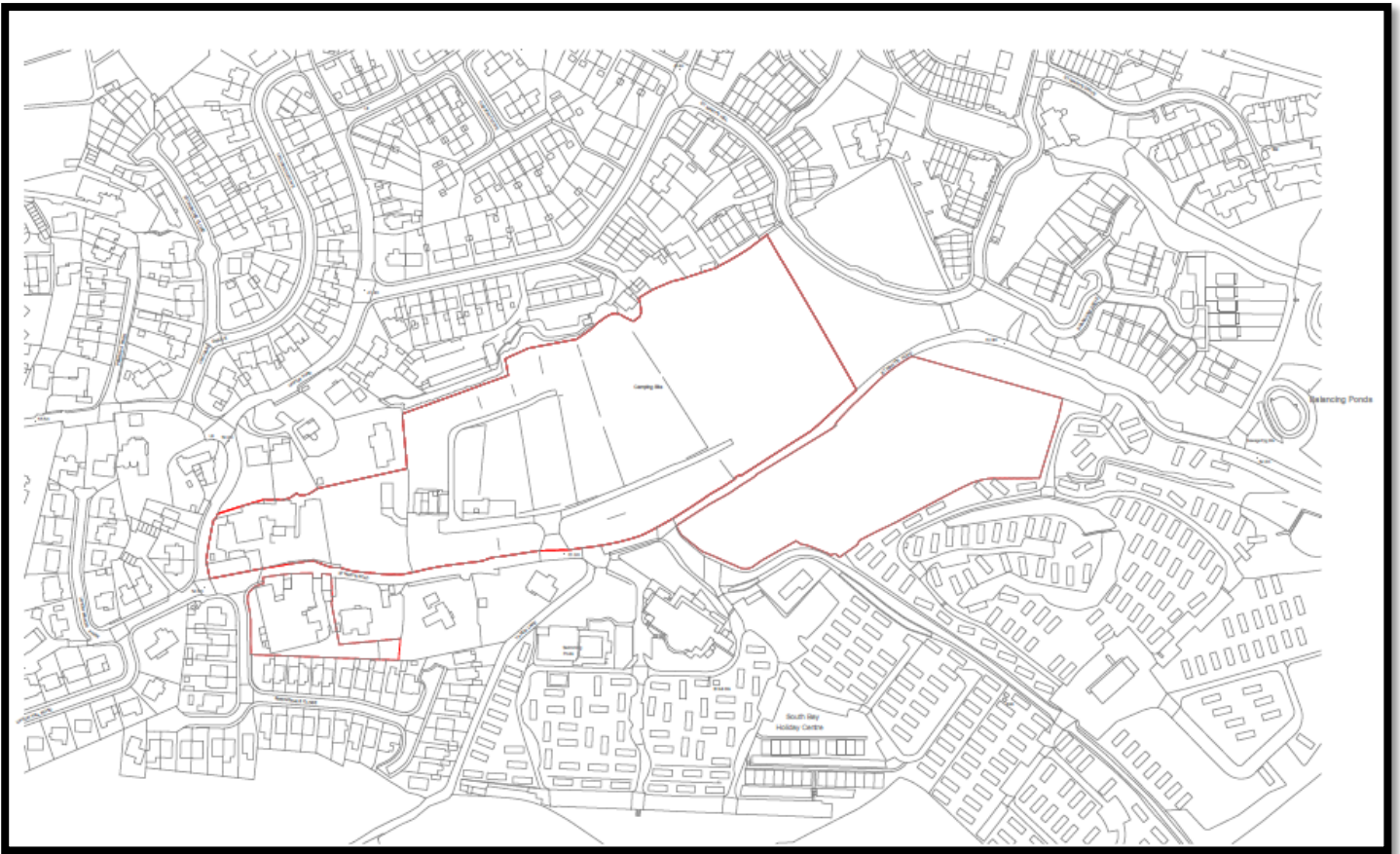
If you have symptoms, including runny nose, sore throat, fever, new continuous cough and loss of taste and smell please do not come to the meeting.

# Agenda Item 3

## TORBAY COUNCIL

Application Site Address	Land At Upton Manor Farm Camp Site, St Mary's Road, Brixham, TQ5 9QH
Proposal	Construction of 130 residential dwellings with access roads, infrastructure, and public open space, the proposal includes the demolition of existing buildings on the site. This application is accompanied by an Environmental Statement. The application is a departure from the Local Plan. The planning application is in Outline with access, layout, scale and landscaping to be determined at this stage and with appearance to be determined at Reserved Matters stage.
Application Number	P/2021/0890
Applicant	Westcountry Land Enterprises (South West) Ltd
Agent	Business Location Services Ltd
Date Application Valid	04.10.2021
Decision Due date	03.01.2022
Extension of Time Date	30.06.2022
Recommendation	Refusal
Reason for Referral to Planning Committee	Major Planning Application
Planning Case Officer	Mr. Alexis Moran

## Site Plan



### Site Details

The application site is The Upton Manor Campsite which is located on the southern edge of the built form of Brixham and comprises of site area of 5.06Ha. The camp and caravan site closed in 2020.

The north boundary is made up of trees and hedgerows, beyond this are the rear areas of residential properties on Briseham Road which, due to the topography, are at a lower level.

The South Bay Holiday Park is located to the south of the site. The access (St Mary's Road) is located on the southern boundary. The southern part of the site is bound by a hedge row. An additional parcel of greenfield land is located on the opposite site of St Mary's Road to the south-east. Springdale Close is located to the south-west, this is a residential close located outside of the AONB.

The east boundary is made up of a strong tree line and hedge, beyond the site to the east is an area of greenspace/meadow which is dissected by St Mary's Hill road which leads to a housing development further to the east.

The far west of the site is allocated in the Brixham Peninsula Neighbourhood Plan (BPNP) as a housing site for 25 units (St. Mary's/Old Dairy) which covers the existing buildings north and south of St. Mary's Road.

The remainder of the site was rejected as a potential housing site by the Brixham Neighbourhood Forum in 2017 as part of their Housing Site Assessment and is designated within the Area of Outstanding Natural Beauty (AONB). The site is also designated as countryside zone under Policy C1 of the Torbay Local Plan. The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within a GHB radio tracked flight path and sustenance zone as well as a potential wintering area for Cirl Buntings.

### **Description of Development**

The planning application seeks outline planning consent but including details of access, layout, scale and landscaping for determination now with only appearance reserved for later determination. The proposed development comprises 130 houses and apartments, including 39 affordable homes (30%), and open green space over a site area of 5.064ha.

The submitted design and access statement advises that the final housing mix will be determined at the Reserved Matters stage, however, the proposals will comprise a variety of dwelling types and sizes to offer a broad range of accommodation, ranging from 1 to 4 bedroom homes broken down as follows:

19 x 4 bed

46 x 3 bed

30 x 2 bed

35 x ½ bed apartments

The design and access statement also states that the building heights of the proposed dwellings will be 2-3 storeys. The submitted layout plan however provides the range of dwelling sizes (storeys) and the number of bedrooms each has.

The application proposes two parking spaces per dwelling across the site and one parking space per flat, which equates to a total of 224 car parking spaces, inclusive of any garages across the site. This will include 20% of all parking spaces having electrical charging points. Each dwelling will provide at least two bicycle spaces within the overall property demise, whilst each apartment will be provided for with storage of one bicycle. At the western extents of the site and associated with the proposed apartments, community facilities for bicycle parking will also be provided via 'Sheffield Stands' as a suitable type of secured / covered cycle storage provision on-site.

Three pedestrian and vehicular access points into the site are proposed onto St Mary's Road. The existing access into Upton Manor Campsite will be replaced by a new residential (vehicular and pedestrian) access situated approximately 115m further west providing a 5.5m wide priority junction and footpaths. The existing access points to the western extent of the site are proposed to be redesigned in order to provide two priority junction arrangements to serve the areas of development in these locations. The access at the southern side of St Mary's Road is proposed to provide a 4.8m wide carriageway with 2m footways on either side and provide access to an undercroft parking area.

In order to provide a suitable carriageway width, part of the existing road will need to be widened from 4.5m to 6.1m (over an area of approximately 180m in length) which will result in the loss of part of the hedgerow on the north side of St Marys Road, this is proposed to be replaced with new hedgerow planting slightly further to the north of the existing. Pedestrian and cycle access will be available via the newly proposed vehicular access points onto St Mary's Road with footways provided either side of each of the proposed access points.

## **Relevant Planning History**

P/1988/2392 – Change of use of existing camp site to touring caravan site-  
Application refused due to highways safety and impact on AONB. Appeal dismissed.

P/1989/0566 - Change of use of existing camp site to touring caravan site-  
Application refused due to impact on AONB

### **Pre-Application Enquiry**

DE/2019/0049 -Formation of 145 dwellings. Summary:

Development within the BPNP allocation is suitable in principle, however it is considered that the layout for this area would need to be revised to consider its visual impact and be a landscape led scheme.

The principle of development beyond the BPNP allocation is not considered to be acceptable based on the information provided. If an application is to be submitted that it would need to be supported by suitable levels of ecological and landscape impact surveys.

### **Relevant Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise.

Section 85 of the Countryside and Rights of Way Act 2000 requires the local planning authority, in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

The following development plan policies and material considerations are relevant to this application:

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Brixham Peninsula Neighbourhood Plan



## Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.
- Section 72 of The Planning (Listed Buildings and Conservation Areas) Act

## Summary of Representations

At the time of writing this report there have been approximately 537 contributors to this application, approximately 525 in objection, 5 in support and 7 representations. A petition entitled 'Save Upton Manor Farm' has also been submitted which states 922 signatures. The key issues raised in the letters of objection are:

- Highway safety
- Highways capacity/increases in traffic
- Lack of pavements causing hazards to people walking to and from the site
- Impact on ecology/loss of wildlife habitats
- Loss of a green space and impact on rural area
- Substantial impact on AONB
- Lack of infrastructure in the area, only 1 school, 1 Doctors Surgery, limited Hospital capacity
- Impact on SSSI
- Impact on Greater Horseshoe Bats
- Impact on drainage/sewers/flood risk
- Contrary to the Local Plan
- Contrary to the Brixham Peninsula Neighbourhood Plan
- Impact on South Hams Special Area of Conservation (SAC)
- Impact on historical features/archaeological remains
- Only part of the site is allocated for housing in the local plan
- Torbay Councils commitments towards Climate change
- Loss of holiday facility/impact on tourism

- Concerns over levels of actual affordable houses for local people and potential for second home ownership
- Overdevelopment
- High density of development
- There are better uses of the land
- Rejected as a site in the BPNP
- Previous application for housing appealed and turned down by the Secretary of State

The key issues in terms of the comments in support of the application related to benefits of the provision of housing.

### **Summary of Consultation Responses**

Drainage - The previously submitted flood risk assessment identifies that infiltration testing has been undertaken on the development site and this has confirmed that the use of infiltration drainage is not feasible at this location. As a result, the developer is proposing to discharge surface water run-off from the development at a controlled discharge rate.

The site has been divided into two areas with separate discharges from each area. The primary attenuation system serving the east of the site has a controlled discharge of 6.6l/sec which complies with the requirements of the Torbay Critical Drainage Area.

The secondary attenuation system serving the west of the site has a controlled discharge of 1.5l/sec which complies with the requirements of the Torbay Critical Drainage Area.

Drawings and hydraulic design for the surface water system serving both areas have been submitted. These designs are based on the current outline layout for the site and these demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 40% for climate change.

As the final layout for the development and hence design for the surface water drainage system may change between the current outline and detailed design. Any changes to the surface water drainage during detailed design must be submitted to the planning authority for approval prior to construction works commencing on site.

Based on the above comments, the drainage engineer has no objections to planning permission being granted for the above development subject to a condition requiring the developer to submit their final drainage design for approval.

Brixham Town Council - Brixham Town Council considered planning application P/2021/0890 at its Extraordinary Council Meeting held on Monday 1 st November 2021 and resolved to object to the proposed application. The following is a summary report of the meeting submitted by the Town Council.

The meeting included representatives on behalf of the Developer, Ward Councillors and 98 members of the community. The residents in attendance were provided with an opportunity to speak regarding the application, all spoke passionately opposing the proposed development, highlighting concerns about the importance of maintaining the natural environment and status of the Area of Outstanding Natural Beauty (AONB) and the current lack of essential services in Brixham. In particular limited school capacity, one medical centre, no NHS dentists, no banks, poor public transport, poor utilities provision and inadequate parking. Brixham is unable to cope with the demand of its existing residents and visitors. Residents also raised concerns about:

- Restricted access to the site
- Inadequate infrastructure
- Insufficient parking
- Increased traffic
- Lack of employment opportunities
- Damage to the tourist industry due to poor infrastructure and further loss of tourist provision
- Drainage and flooding issues
- Inadequate Highways, both into Brixham and surrounding the proposed site

- Potential increase in second homes
- Negative environmental impact
- Local Housing shortage should be met by utilising the large volume of empty properties in the town and requires a housing policy based on local need and not profit.
- Devastating impact on the Area of Outstanding Natural Beauty (AONB) - the development site lies wholly within the South Devon AONB.
- Site is not allocated in the Brixham Peninsula Neighbourhood Plan (BPNP)
- Over development of site
- Site is on the known flight path of the Greater Horseshoe Bats from the Berry Head Roost.
- Site was previously rejected in the BPNP Housing Site Assessment
- Application is contrary to major policies contained in both the BPNP and Local Plan
- Site lies outside the Settlement Policy E2 of the BPNP
- Proposal will cause serious environmental harm within the designated AONB area
- National Planning Policy Framework (NPPF) states “Great weight should be given to enhancing and protecting beauty in areas of AONB” It was noted, a previous proposal in 1988 to develop the site was rejected and subject to an appeal to the Planning Inspectorate for the Secretary of State.

The appeal was dismissed on the grounds that it would be “seriously detrimental to the character of the Area of Outstanding Natural Beauty and the surrounding countryside in general.” This is further supported in the BPNP Housing Site Assessment document which concludes “The site is not deliverable because of the severe landscape and environmental constraints”. Brixham Town Council is opposed to this application due to its departure from the made Brixham Peninsula Neighbourhood Plan, Local Plan and the NPPF. The application is contrary to the following key policies: Brixham Peninsula Neighbourhood Plan J4.2 Local employment BH2 Occupation of new affordable homes BH3 Delivery of new homes BH4 Brownfield & Greenfield sites BH8 Access to new dwellings BH9 Exception Sites E1 Landscape beauty and protected areas E6 Views and Vistas E8,5.38,5.39, 5.40,5.41,5.48 Internationally and nationally important ecological sites and species, Greater Horseshoe Bats L2 Educational provision to local need TO1.2 and TO1.3 Support for Tourism Torbay Local Plan SDB1 Brixham strategic policy area SS3 Presumption in favour of sustainable development SS6 Strategic transport

improvements SS7 Infrastructure, phasing and delivery of development SS8 Natural environment SS9 Green infrastructure SS10 Conservation and the historic environment SS11 Sustainable communities SS12 Housing SDB3 Brixham Urban Fringe and Area of Outstanding Natural Beauty<sup>3</sup> TO2 Change of use of Tourism accommodation and facilities TA1 Transport and accessibility TA2 Development access C1 Countryside and the rural economy C2 Coastal landscape C4 Trees, hedgerows and natural landscape features NC1 Biodiversity and geodiversity DE1 Design SC1 Healthy Bay ER1 Flood Risk ER2 Water management W5 Waste water disposal National Planning Policy Framework. According to the NPPF (National Planning Policy Framework, 2021) the objective is to achieve sustainable development by “meeting the needs of the present without compromising the ability of future generations to meet their own needs”. At the heart of this framework is the presumption in favour of sustainable development (NPPF: para 11). However, for decision taking there are exceptions (NPPF: para 11d) which states “in the absence of relevant development plans” e.g. a 5 year land supply “or where policies of the development plan are out of date and any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”. It is difficult to conceive a more poorly located site given the scale in which the proposed development departs from the BPNP, Local Plan and NPPF. The development would have a demonstrable impact on the AONB and will result in a fundamental and irreversible loss of this important site.

Devon Wildlife Trust - *“We object to the outline planning application because we consider that the proposals do not meet planning policy requirements. The comments provided below are based on the Environmental Statement produced for the application (Business Location Services Ltd, 2021). The site lies within an area which has been designated as an Area of Outstanding Natural Beauty (AONB). The site is also designated as countryside zone under Policy C1 of the Torbay Local Plan. Policy SS8 of the Local Plan states that when considering development within the AONB the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. We do not consider that the proposals fall within these criteria. Large sections of the southern boundary hedgerow are*

*proposed for removal as part of the application. It is considered that the removal of the hedgerow would detrimentally impact on the rural character of the area and the AONB to the extent of being unacceptable and contrary to Policy SS8 of the Local Plan. In accordance with paragraph 172 of the NPPF, this Policy requires development within or impacting on the AONB to demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the National Planning Policy Framework. This policy also advises that development should not harm protected landscape characteristics including dark night skies and tranquility. We do not consider that the proposals conserve or enhance the landscape and scenic beauty of the site. Furthermore, we do not consider that the proposals will protect landscape characteristics including dark night skies and tranquility. Paragraph 172 of the National Planning Policy Framework (NPPF) advises that Planning permission should be refused for major development within the AONB. We concur with this statement. Policy C1 of the Local Plan and E2 of the Brixham Peninsula Neighbourhood Plan state that outside settlement boundaries the following forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment: 1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3; 2. Development required for forestry, horticulture or agriculture; 3. Touring caravans and tents; 4. Tourist facilities appropriate to the rural area; 5. Development associated with outdoor sport and recreation appropriate in a rural area; 6. Sensitive conversion, alteration and extension of existing buildings; 7. Essential improvements to the highway network; and 8. Appropriate renewable energy development. The area of site outside of the Neighbourhood Plan designation clearly does not meet the forms of development allowed by Policy C1 and Policy E2 and therefore we do not consider the proposals meet planning policy. For the reasons given above, we object to the outline planning application and recommend that it is refused.”*

Green Infrastructure Manager - The site is not sustainable from an arboricultural perspective owing to the missing information within the tree constraints report EV-

3528-TCR, in conjunction with the pressure on the Torbay Council owned tree from construction traffic.

Torbay Council Landscape Consultant –

**Original consultation response dated 10.02.22**

*The LVIA is broadly consistent with best practice guidance and has been undertaken by suitably qualified landscape professionals. However, some issues are highlighted below relating to key omissions, lack of detail, and application of questionable criteria in judgements of significance. As a result, the likely significance of effects on the countryside character and the AONB special qualities is underplayed and the assessment conclusions cannot be fully relied upon to inform planning decisions.*

*Issues highlighted below in the justification section should be noted and drawn to decision-makers attention, and further information requested as appropriate.*

*Should the application be determined on the basis of current information, I consider there are strong grounds for refusal: Consideration does not appear to have been given to providing local housing need at an alternative site or sites outside the AONB. The proposals would harm rather than conserve and enhance the distinctive characteristics and views of the site that contribute positively to its character and to special qualities of the South Devon AONB. The character of views into, within and out from the AONB would not be protected. The necessary widening of a stretch of St. Mary's road together with associated 2m wide footways and street lighting could not be accommodated without harming the rural character of the AONB and removing 354m of important hedgerows that are of historic and biodiversity value. The proposals would be seen together with unsightly past development within the AONB which would exacerbate rather than reduce adverse visual impacts further. The landscape and visual effects of the proposals during and following construction would be major/moderate and significant. Whilst mitigation would reduce adverse effects after 15 years, any residual adverse effects in the long term are significant in the context of a nationally protected landscape as they would fail to 'conserve and enhance' the AONB. Therefore contrary to policies 176 and 177 of the NPPF, SS8, SDB3 and C4 of the Torbay Local Plan and policies Lan/P1, Lan/P5, Trans/P1 and LanMan/P3 of the South Devon AONB Management Plan.*

*Under section 85 of the CROW Act and in respect of NPPF , decision-makers are required to have regard to the purposes of AONB designation and give great weight to conserving the natural beauty of the AONB in the planning balance.*

*I agree with the Brixham Urban Fringes Landscape Study which states “ These sites are ‘prominent’ ....and not suitable for development; in the event that the existing uses are no longer viable the site should revert to greenfield uses”. Restoring the site for biodiversity, recreation and carbon sequestration benefit would seem a more appropriate use for this site in line with emerging Government aspirations for nationally protected landscapes.*

## **JUSTIFICATION**

### **EIA Regulations**

*These require consideration of alternatives and reasons for discounting these. To note: ES Chapter 3.0 includes consideration of alternative site layouts and design options. However, no alternative sites outside the AONB have been identified or assessed that could meet the stated housing need. Taking into account NPPF 177 and footnote 60, the proposal could result in significant effects due to its scale and urban character combined with its sensitive location within a predominantly greenfield site in an AONB, and in my view should be considered ‘major development’. In such circumstances, NPPF states that ‘permission should be refused for major development other than in exceptional circumstances...’ and that ‘ consideration...should include assessment of... the scope for developing outside the designated area’. Request further information 1: The ES should include consideration of alternative sites outside the Nationally protected landscape that could meet the local housing need, and why discounted, including consideration of comparative landscape and visual effects.*

### **Methodology and criteria**

*I disagree with the criteria used for assessing level of significance of effects (ref LVIA Table 8.5). The policy test is to conserve and enhance the natural beauty of the AONB. If the likely effects of the proposal were to permanently and irreversibly harm any of the special qualities and associated distinctive characteristics and valued*



*features of the AONB, such effects should be regarded as significant in the context of a nationally protected and valued landscape. I consider that there would be adverse effects on these landscape receptors (see comments below). Given the statutory duty of public bodies to have regard to the purposes of AONB designation under s.85 of the CROW Act, it is important for decision-makers to understand that if 'moderate' or even 'minor' adverse effects on the landscape are predicted, the fact that this would be an adverse rather than a beneficial effect on the AONB should be given great weight by decision-makers in the planning balance. This is critical given what is at stake i.e. benefits of meeting local housing need versus the likely harm to a nationally protected landscape.*

*Request further information 2: To ensure that the visualisations can be relied upon as reasonably accurate, a detailed methodology should be provided on how the visualisations were constructed. Given the high sensitivity of the landscape context (in an AONB) and potential for the proposals to encroach upon skylines and possibly obscure views of the AONB in some views from Brixham (e.g. VP 6, 7, 11), it is important to ensure that wireline visualisations are reasonably accurate. 'Type 4' visualisations referred to in LI TGN 06/19: 'Visual Representation of Development Proposals' may be required, subject to review of the methodology.*

#### *Scope and level of detail*

*Request further information 3: To understand the likely change to the character and appearance of the site as perceived from St Mary's Lane, an existing viewpoint and visualisation is required looking eastwards along the lane from the west (see photo 1). This would help to convey the degree of harm to the rural landscape character, and AONB special qualities resulting from the removal of the traditional stone buildings of Upton Farm and the widening of St Mary's Lane with consequent need to remove the existing stone-faced hedgebank to the north of the lane.*

*The ecological assessment states that the proposal would require removal of 354m of hedgerows along St Mary's Lane to enable construction. It is likely that these hedgebanks are more than 30 years old given St. Mary's lane appears on OS 1st Edition maps. As such they are likely to be 'Important Hedgerows' as defined under the Hedgerow Regulations. On the site visit a section of stone-faced hedgebank*

*was apparent. Such vernacular detail contributes to the distinctive character of the AONB. The LVIA fails to mention that 354m of Important Hedgerow including stone-faced banks characteristic of the area would be lost as a direct result of construction.*

*Request further information 4: A plan should be provided and referred to in the LVIA identifying the exact location of hedgerows and other vegetation to be removed during construction, and the location of stone-faced sections. 'Important Hedgerows' should be identified. Typical cross-sections through St Mary's lane are also required, showing the existing situation and the proposals at year 1 and indicating vegetation heights at year 15. Sections should be positioned*

*The LVIA identifies relevant legislation, policy, evidence base and designations. This includes reference to the South Devon AONB Management Plan but does not identify policies of the Management Plan that are material considerations and of relevance to the proposals.*

#### *Baseline and evaluation*

*The LVIA fails to identify all relevant AONB special qualities as set out in the AONB Management plan or consider how the following distinctive characteristics of the site contribute to the AONB's special qualities:*

- a) The cluster of traditional historic stone buildings of Upton Farm along St Mary's lane and the historic hedgebanks along St Mary's lane contribute to "A landscape with a rich time depth and a wealth of historic features and cultural associations".*
- b) The pleasing rolling topography of the greenfield parts of the site, the layout, stone building materials and visible vernacular details of Upton farmstead, and the pattern of wide deep and mature Devon hedges (hedgerows on banks) along St Mary's lane contribute to a "Deeply rural rolling patchwork agricultural landscape".*
- c) The Devon hedges within the site contribute to "A breadth and depth of significant habitats, species and associated natural events"*
- d) The narrow historic St Mary's lane bounded by often stone-faced Devon hedges contributes to "An ancient and intricate network of winding lanes, paths and*

*recreational routes". St Mary's lane is a key recreational route for walkers linking the town to the coast, and its narrow winding nature helps to suppress vehicle speed.*

*Upton farm is recorded on the Devon Historic Environment Record (HER No. MDV111976). It states that this farm "was first depicted as a range of buildings on the Brixham Tithe Map of 1838. Buildings of a similar layout are also depicted within this location on the First and Second Edition 25 inch Ordnance Survey maps". The HER dates the buildings to between 1540 and 1838 and shows that the farm buildings were once surrounded by orchard that has since been removed to make way for a yard/parking area to the east of the buildings on the north side of St Mary's Lane.*

*Given proximity to and urban influence from Brixham, the site does not offer an "area of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement" that are special qualities of other parts of the AONB. However, I consider that the overall rural character and green-ness of the site as perceived from St Mary's lane provides walkers with a route of accessible gradient offering relative tranquillity in contrast with the busy urban townscape of Brixham. The traditional buildings of Upton Farm provide a gateway into the AONB and a transition from urban to rural buildings. This is not apparent from the viewpoints selected. Similarly the view north across Brixham is not conveyed.*

*Request further information 5: Two new viewpoints and associated visualisations should be provided as follows:*

- a) At a point between VPs 13a and 13b that shows the character and appearance of the farm buildings on both sides of the road together with the Devon hedge on the north side*
- b) To convey the view looking north across the site towards Brixham with the church as a distinct landmark, which is obtained when descending towards St Mary's Lane from the entrance of the holiday park.*

*Actual assessment of effects*

### *Effects on the landscape resource*

*The LVIA states that the proposals would result in ‘no significant landscape effects’ during construction (8.124) and operational phase (8.127) phase. I agree that the site “feels distinctly separate to the areas of undeveloped coast that lie further to the south and east” and does not exhibit some of the AONB special qualities due to the surrounding influences of built development. However, I disagree with Para. 8.150 (residual effects) which states that “neither the application site nor its immediate setting exhibit any of the special qualities noted in the AONB management plan”. The LVIA lacks recognition that the site contains distinctive landscape features and characteristics that contribute to other special qualities of the AONB, some of which would be permanently lost or degraded. The AONB is not all about scenic coastal views. Narrow lanes, historic hedgebanks, traditional stone buildings, undulating topography (evident from greenfield character of site) are all distinctive characteristics that contribute to the AONB special qualities as noted in the AONB Management Plan (Annex 4 – Understanding special qualities’) All of these characteristics are present on site and would be adversely and permanently affected by the proposals, which would further urbanise the site rather than conserving its countryside character and AONB special qualities. Therefore I consider such landscape effects to be significant and adverse and irreversible in an AONB context where the sensitivity of the landscape to such change is of the highest level.*

### *Effects on views/visual amenity*

*I agree with many judgements in the visual assessment. The greatest adverse visual impacts would occur on the sequential views experienced along St Mary’s lane (Annex 8.9 Visual effects tables). The LVIA predicts that the proposals would have a major/moderate adverse visual effect during construction and once completed, and that this is significant. I agree. However I disagree with the LVIA when it states that after 15 years effects would not be significant as a result of the matured landscaping scheme softening the visual impact. The urbanisation of the north side of this greenfield site along with the permanent widening of St Mary’s lane (with loss of historic hedgebanks), the loss of the undulating greenfield character and the removal of the traditional stone farm buildings would remain as significant residual effects that would harm the valued countryside character- even if reduced to ‘moderate adverse’ as the LVIA predicts. Such change would harm rather than conserve and enhance*

*the special qualities of the AONB that contribute to its natural beauty. The panoramic views over Brixham to the north that are enjoyed by people from the adjacent lane would likely be permanently obscured and changed to a feeling of being immersed in the urban area. Therefore in my view there would be significant permanent adverse localised effects on the landscape character as perceived in close views.*

### *Mitigation*

*The LVIA identifies mitigation measures that have been included in the proposals and that would reduce visual impacts and compensate for lost landscape features to some extent in the long term. This includes the retention of the southern part of the site as a green field for recreation, the retention of most of the hedges in the site, the 'setting back' of the development from boundaries, the limit of the height of dwellings to 2 storeys (with 3 storeys in the area of Upton Farm) and the establishment of new trees and hedges. However, I disagree with the LVIA conclusion that such measures would result in 'no significant residual landscape and visual effects after 15 years'. Clearly the change in site character from countryside to urban development would be perceived as an irreversible loss of countryside and AONB.*

*With regard to more distant views looking towards the site from Brixham, the LVIA does not appear to have informed proposed mitigation measures 'through an iterative process of assessment and design' as claimed (8.130). For example, in views from the north (e.g. VP1, 7 and 8) the north-eastern site field is visually prominent, and together with the Devon hedge along St Mary's lane and the southern part of the site indicate a countryside character to the site- albeit now surrounded by development. The visualisations indicate to me that development in the eastern part of the site would change the composition of the view noticeably and mask the visible greenfield parts of the site – including the southern part to be retained as open space. The green wedge provided by the site helps to soften the transition between the town and the undeveloped coast- and is important. There is scope to mitigate this to a degree by reducing the extent of development to retain this visually prominent eastern part of the site as greenfield. In my opinion the site does not have capacity to accommodate development in the eastern half of the site without changing the nature of views from the north. The balance of green and built*

*land would be changed and would advance the built edge of Brixham further up, especially in VP 11 where it would obscure the backdrop of the hills behind.*

*It is recommended that scope for further mitigation is explored prior to determination:*

- a) Scope to restore rather than demolish the traditional stone buildings of Upton Farm so that they can continue to contribute positively to the rural character of the area and the special qualities of the AONB. I cannot find any submitted evidence (e.g. structural survey/assessment) that indicates that this is not possible.*
- b) Scope to translocate historic hedges or at least conserve their soil bank and stone for use in creation of replacement hedgebanks.*

*The Landscape Strategy (LHC Drawing Lo1.03 /Rev. P3) highlights key design principles and includes indicative planting mixes. These are satisfactory apart from the following issues:*

- The native woodland mix does not include any evergreen trees as stated in the LVIA (8.148).*
- The percentage species composition is not stated from some planting mixes.*
- It is not clear what landscape elements could be secured and delivered as advance planting as proposed in the LVIA*
- No details are provided as to how the landscape strategy would be technically achieved and sustained into the future.*

*Such matters could be addressed through suitably worded conditions (see below).*

#### *Presentation*

*Viewpoint photos: These are annotated to indicate the horizontal extent of the site but are not helpful in identifying the exact location and therefore magnitude of the site in the view.*

*VP11: This photo has been taken at a location that does not include the full extent of the site. I am concerned that proposals would obscure the backdrop hills and could potentially break the skyline.*

*Request further information: VP11 to be re-taken further along the road where a view of the full horizontal extent of the site is afforded. A Type 4 wireline visualisation to be provided.*

*The Landscape Strategy (LHC Drawing Lo1.03 /Rev. P3):*

*The same green colour used for existing and proposed vegetation makes it difficult to decipher between them.*

*Request further information: A revised plan that clearly differentiates between existing and proposed vegetation is required. Existing trees and hedges to be removed should also be clearly identified (see earlier comment).*

#### **CONDITIONS- SHOULD CONSENT BE GRANTED**

*Suitably worded conditions are recommended covering the following:*

- *Protection and management of existing vegetation prior to during and after construction*
- *Details of landscape proposals to be submitted, approved and implemented based on the landscape strategy and mitigation in the LVIA, including ground preparation, species composition, planting density, means of protection, establishment method, 5 year aftercare management, and location and timescale for delivery of planting- including advance planting.*
- *LEMP to be approved prior to occupation of first dwelling – to inform ongoing landscape management and identify arrangements and responsibilities for such.*
- *Limit building heights to 1/2 storeys*
- *Lighting scheme to be approved- to limit effects of artificial light on the dark skies quality of the AONB*
- *Details of materials palette for new buildings- to reflect the characteristic materials and distinctive details of the Upton Farm buildings and those within the wider AONB countryside.*
- *Details of hedgebank construction*

**Additional comments 24.05.22**

*I refer to my previous response dated 10 February 2022 and the requests for further information made at that time. I have reviewed the additional information that supplements and updates the plans and visualisations in the original LVIA (see detailed review below) and conclude that the request has been partially but not fully met. Information clarifying existing hedges and hedgebanks to be retained and removed is helpful, as are the sections along St Mary's Lane and the additional viewpoint 17 looking into St Mary's Lane from the west with the existing traditional stone buildings on either side forming a rural 'gateway' signalling the start of the AONB. However, no further information has been provided that identifies alternative sites outside the AONB that would meet the local housing need, and some viewpoint locations and visualisation types fail to fully convey the likely nature and extent of effects on the AONB's rural character and quality of views enjoyed. Overall, of the further visual assessment information received, this serves to reinforce my original case for refusal on grounds that:*

*a) 'Exceptional circumstances' for this major development in the South Devon AONB have not been demonstrated since the applicant has failed to assess the scope to meet the housing need outside this Nationally designated and protected landscape. Therefore clear grounds for refusal taking into account NPPF 177 and footnote 60.*

*b) New housing and a widened section of St Mary's Road with pavements would effectively extend the town of Brixham into the South Devon AONB and result in the permanent and irreversible physical loss of part of this Nationally valued and protected landscape. Whilst the retention and biodiversity enhancement of the southern field is welcome, this should not be at the expense of an overall negative impact on the AONB arising from urban development. This would be contrary to the purpose of designation - to conserve and enhance natural beauty - and contrary to National and Local Plan policy. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme.*

*The LVIA text has not been amended and I therefore remain of the opinion that its conclusions cannot be fully relied upon to inform planning decisions. The LVIA does not fully consider effects of the proposals on the special qualities and valued features*



*of the AONB. It underplays the significance of effects, judging 'moderate adverse effects to be 'not significant. I acknowledge that the landscape's susceptibility to change is compromised by the urban influences of the site context, but the site remains within a Nationally protected landscape which makes it of the highest value and therefore of high sensitivity to such a change.*

#### **DETAILED COMMENTS ON ADDITIONAL INFORMATION**

*Request further information 1: The ES should include consideration of alternative sites outside the Nationally protected landscape that could meet the local housing need, and why discounted, including consideration of comparative landscape and visual effects.*

*No further information has to date been provided that meets this request.*

*Request further information 2: To ensure that the visualisations can be relied upon as reasonably accurate, a detailed methodology should be provided on how the visualisations were constructed. Given the high sensitivity of the landscape context (in an AONB) and potential for the proposals to encroach upon skylines and possibly obscure views of the AONB in some views from Brixham (e.g. VP 6, 7, 11), it is important to ensure that wireline visualisations are reasonably accurate. 'Type 4' visualisations referred to in LI TGN 06/19: 'Visual Representation of Development Proposals' may be required, subject to review of the methodology.*

*A 'Visualisation Methodology' has been provided that sets out how LHC constructed the photowire visualisations.*

*I have reviewed this to the best of my ability against the Landscape Institute Technical Guidance Note referred to above. Appendix 10 in the guidance provides an indicative list of information that should be supplied in such a methodology. Incidentally, the visualisations provided are 'photowire' images intended to give an idea of the location, size and degree of visibility of the proposed development (illustrative masterplan) in the view. They should not be referred to as photomontages. If they were, the visualisations would be fully rendered to appear 'photo-realistic' and help understand the character of the development in its setting*

*and the effectiveness of design choices (including landscape mitigation). Photowires are sufficient for the purpose of the assessment at this stage for the majority of viewpoints, with the exception of the new viewpoint 17 where a photomontage would be more useful in conveying the effect of the loss of the traditional stone buildings and boundary treatments on the rural character of this gateway into the AONB.*

*Having reviewed the methodology against TGN06/19 I conclude that given outline stage, the general methodology submitted gives reasonable confidence that the approach used to prepare the Type 3 images provides a general representation of what might be seen if the proposed development were built. However, the photowire visualisations should not be regarded as 100% accurate. The methodology lacks detail on the likely level of accuracy (e.g. horizontal accuracy 'within 1-2m'). There is also a lack of detailed information that would allow the accuracy of the image to be checked. This includes: the camera location grid co-ordinates and height of ground in m AOD for each viewpoint; and the method used to establish the camera location. The limitations of the methodology with regard accuracy are stated in the methodology (section 1, last paragraph). A higher level of accuracy would be possible, for example by using survey equipment to capture camera locations at viewpoints and relevant target points within the view. It is possible to achieve centimetre accuracy. Should a higher level of accuracy become necessary, 'Type 4' images would be required.*

*Request further information 3: To understand the likely change to the character and appearance of the site as perceived from St Mary's Lane, an existing viewpoint and visualisation is required looking eastwards along the lane from the west (see photo 1). This would help to convey the degree of harm to the rural landscape character, and AONB special qualities resulting from the removal of the traditional stone buildings of Upton Farm and the widening of St Mary's Lane with consequent need to remove the existing stone-faced hedgebank to the north of the lane.*

*A new viewpoint looking east from Upton Manor Park, Junction with St Mary's Lane has been provided (VP 17). This meets requirements as it conveys the rural character of the lane and a 'gateway' into a more relaxed rural AONB very well. However, whilst the accompanying photowire image indicates the location and form*

*of the proposed development, it does not convey the degree of harm to the rural character as a fully rendered photomontage would. It is recommended that this is requested should Decision-makers find such an image more reliable as a way to convey the nature of change.*

*Request further information 4: A plan should be provided and referred to in the LVIA identifying the exact location of hedgerows and other vegetation to be removed during construction, and the location of stone-faced sections. 'Important Hedgerows' should be identified. Typical cross-sections through St Mary's lane are also required, showing the existing situation and the proposals at year 1 and indicating vegetation heights at year 15.*

*A Hedgerow Removal Plan has been provided that satisfies this request (Drg. No. LHC-00-00-DR-UD-L01.07 Rev P2). The proposal on the far western boundary now appears to be to replace the existing stone wall boundary with a single species hedge. This is currently inconsistent with the Landscape Strategy (Drg ending UD-L01.03 Rev P3), which would require updating. The stone walls here contribute positively to the traditional rural character of the street scene as do the buildings. Their loss would be regrettable. The plan lacks detail on which hedgerows are assessed as 'Important Hedgerows' under the Hedgerow Regulations.*

*Request further information 5: Two new viewpoints and associated visualisations should be provided as follows:*

- a) At a point between VPs 13a and 13b that shows the character and appearance of the farm buildings on both sides of the road together with the Devon hedge on the north side;*
- b) To convey the view looking north across the site towards Brixham with the church as a distinct landmark, which is obtained when descending towards St Mary's Lane from the entrance of the holiday park.*

*In terms of a), a suitable viewpoint photo has not been provided. Photoviewpoint 18 (view west along St Mary's Road) is not located to convey the requested context of farm buildings and should have been taken further along the lane to the west.*

*In terms of b), a new viewpoint 16 has been provided that satisfies this request. The photowire visualisation of viewpoint 16 indicates that the proposed housing would extend above the distant skyline, obscuring distant panoramic views across the town of Brixham from this viewpoint. The rural character of St Mary's lane would be eroded by the presence of built urban development in the field to the north. It is acknowledged that caravans occupy the field in the summer, although no views demonstrating this have been provided that would allow comparison with this visualisation. The height and density of caravans are likely less than the proposed housing and are in any case temporary/seasonal.*

*It is recommended that scope for further mitigation is explored prior to determination:*

*a) Scope to restore rather than demolish the traditional stone buildings of Upton Farm so that they can continue to contribute positively to the rural character of the area and the special qualities of the AONB. I cannot find any submitted evidence (e.g. structural survey/assessment) that indicates that this is not possible.*

*b) Scope to translocate historic hedges or at least conserve their soil bank and stone for use in creation of replacement hedgebanks.*

*In terms of a), no further information has been submitted and no change has been made to the proposals in this respect.*

*In terms of b), the new Hedgerow Removal Plan indicates commitment to try to translocate historic stone-faced hedgebanks, which is welcome.*

*Request further information: VP11 to be re-taken further along the road where a view of the full horizontal extent of the site is afforded. A Type 4 wireline visualisation to be provided.*

*This request has not been met. The additional information uses the same viewpoint and the effect of the development on the views of the green hill backdrop of the AONB remains uncertain. An accurate Type 4 visualisation was requested but this is not forthcoming. It is likely that views in the same direction afforded further down Metherell Avenue would enjoy the green-hill backdrop of the AONB and a photowire may indicate that the proposed development would fully obscure this. This remains uncertain in the absence of reliable evidence.*

*Request further information: A revised plan that clearly differentiates between existing and proposed vegetation is required. Existing trees and hedges to be removed should also be clearly identified (see earlier comment).*

*This has been met by the new Hedgerow Removal Plan. See earlier comments.*

AONB Unit - In summary, the South Devon AONB Unit objects to this planning application for the following reasons:

- The proposal does not conserve and enhance the natural beauty of the South Devon Area of Outstanding Natural Beauty (AONB), would compromise town and countryside transition and result in the loss of key traditional features, harmful to the special and distinctive landscape qualities of the South Devon AONB, contrary to the principal material protected landscape policies; and
- It is considered that there are no exceptional circumstances in the public interest that justify this proposal.

The proposal fails the relevant principal policy tests relating to protected landscapes contained in the NPPF, Torbay Local Plan policies SS8 (Natural Environment), C1 (Countryside and the Rural Economy) SDB3 (Brixham Urban Fringe AONB), Brixham Neighbourhood Plan Policies E1 (Landscape Beauty and Protected Areas) and E2 (Settlement Boundaries) the Torbay Landscape Character Assessment landscape strategy, the South Devon AONB Management Plan and AONB Planning Guidance.

Waste and Recycling - The houses on the development will require space to store 1x 240l bin, 2x 55l recycling boxes and a food caddy.

In relation to apartments/flats, the communal bin store for numbers 1-15 will need to house x3 1100 litre bins for residual waste and for recycling it is recommended, individual 240 litre bins are provided for each material stream. Seven 240 litre should be sufficient; 1x paper, 1x food waste, x2 plastic and cans, x1 glass and x2 cardboard. However, consideration should be made for further materials to be collected in the future such as plastic films and flexibles which would require a further 240l bin.

In relation to apartments/flats 112-132, the bin store should be designed to house 4x1100 litre bins for residual waste, and 10 x 240 litre bins for recycling based on the different material streams being kept separate.

Police- The Police have no objections in principle to the proposed scheme. It is appreciated that this is an outline application, but early consultation with the police frequently prevents delays further down the process when crime and disorder issues present a problem with the layout of a submitted design. Whilst it is understood the proposed layout is illustrative, as there appears to be no mention within the Design & Access Statement of security or crime prevention measures per se, it is not known if these key matters have been considered for the scheme or where and how it is proposed they be implemented. Any future application should be in accordance with the Police's design out crime advice and recommendations.

Sports Development Officer: It is suggested that 1.2 hectares per 1000 population = 12 sqm per person at £15 - therefore = £180 per person x poss. 300 more people = £54,000, this contribution will be to enhance sports facility provision in the Brixham peninsula to cope with extra demand created from occupancy of the dwellings. This contribution to sports provision should be provided prior to occupation.

Environment Agency - *"No objection to the proposed development subject to the inclusion of a condition, relating to the management of contaminated land, on any permission granted. Suggested wording for the recommended condition and the reason for our position is provided below.*

*No development approved by this planning permissions shall commence until a strategy for managing the risks associated with contamination of the site is submitted to, and approved in writing by the local planning authority. The strategy will include the following components:*

- 1. A site investigation scheme, based on the information gained in the desk study to provide information for an assessment of the risk to all receptors that may be affected, including those off site.*
- 2. The results of the site investigation and risk assessment (1) and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.*
- 3. A verification report on completion of the works set out in (2) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.*

*Any changes to these agreed elements require the express consent of the Local Planning Authority.*

*Reason for condition – For the protection of controlled waters.*

*Reason for position – Contaminated Land*

*Part of the proposed development site is noted to have a previous industrial use. The development site is located on a Principal Aquifer, relating to the highly permeable Sharkham Point Member. We have reviewed the submitted Preliminary Report (reference: C62033-1(00) dated May 2019) and Ground Investigation Report (reference: C62033, dated June 2019).*

*We note that the further assessment carried out showed that there are no significant risks to controlled waters. We also note that structures used for commercial purposes like MOT garage and an engineering company are still present in the west of the site and agree with the report that it may be prudent to undertake some further confirmatory testing once the buildings are demolished.*

*Based on this we consider that planning permission should only be granted if the above planning condition is included on any decision notice. Without this condition, the proposed development on this site poses an unacceptable risk to the environment*

*and we would wish to object to the application.*

*The development site is located in flood zone 1 (low risk of flooding) but we highlight that it is located within Torbay Critical Drainage Area. We recommend that you consult with the Lead Local Flood Authority (LLFA) on this matter.*

*With regards to the proposed drainage approach from the site, the principle of draining surface water runoff from Area 1 of the proposed development site to the Higher Brixham Watercourse, as is proposed, would appear to be acceptable as the topography suggests this would have been the natural route runoff will have taken. Again, we defer to the LLFA on this matter. Your authority may want to consider how feasible is it to provide the necessary infrastructure to convey water from Area 1 to ‘a culverted section of the Higher Brixham Stream located on the Junction of Doctors Road and Drew Street approximately 500m from the site.’ as shown in Appendix C of the submitted ‘Flood Risk Assessment and Drainage Strategy’ when determining the application.*

*We take this opportunity to state that any activities that may cause damage to, or affect the stability of, the bank or culvert, or ‘affect the drainage of the river’ of the Higher Brixham Watercourse, would require the prior written permission from us in the form of a Flood Risk Activity Environmental Permit given the status of the watercourse as a ‘Main’ river.”*

NHS - The application has been reviewed from a primary care perspective and the following comments are provided by NHS Devon Clinical Commissioning Group as their response to the application. The response has been informed by the Devon Health Contributions Approach: GP Provision (<https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance>) which was jointly prepared by NHS England and Devon County Council. In preparing this response, it is noted that Torbay Council Local Plan 2011 to 2031 (adopted 29<sup>th</sup> October 2018.) states that:

*“Policy SS11 Sustainable communities*



*Development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay....*

*Development proposals will be assessed according to whether they achieve the following criteria, insofar as they are relevant and proportionate to the development:*

- 1. Meet the needs of residents and enhance their quality of life;*
- 4. Promote social inclusion, and seek to eliminate exclusion based on access to housing, health, education, recreation or other facilities;*

*Policy SC1 Healthy Bay*

*All development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal.*

*To achieve these requirements, applicants should demonstrate that they have had regard to the following:*

- 1. Consideration of the opportunities available to address the cause of ill-health in the local area;*
- 2. Promotion of healthy, safe and active living for all age groups, including healthy living, options for older people; and*
- 3. Improvement of access to medical treatment services, including the provision of healthcare clusters where appropriate”*

The CCG's concern is that Compass House Medical Centre is already at capacity within its existing footprint therefore it follows that to have a sustainable development in human health terms the whole local healthcare provision will require review. Compass House Medical Centre is currently the only surgery in the town and many patients who were registered with Mayfield Medical Centre have had to travel to Paignton since the closure of St Luke's Medical Practice in April 2021.

Additional GP facilities are being developed at Brixham Community Hospital which will be available from March 2022 onwards. However, these new additional facilities will not be able to accommodate the increased patients from this development.

A new £1.5m GP surgery extension is being developed at Compass House Medical Centre Galmpton Surgery, partly to absorb the extra patients that will be generated by the White Rock development. This surgery will be utilised by many of the existing Compass House Medical Centre patients, releasing patient capacity from the main surgery. It is logical, therefore, to request a s106 contribution towards the funding of the Compass House Medical Centre Galmpton Surgery extension, which will alleviate the patient congestion from the town centre.

With this in mind and utilising the document “Devon Health Contributions Approach: GP Provision document” which was agreed by NHS England and Devon County Council, the following calculation has been made:

Methodology for Application P/2021/0890

1. Residential development of 133 dwellings
2. This development is in the catchment of Compass House Medical Centre - Brixham, Compass House Medical Centre - Galmpton, Compass House Medical Centre - Brixham Hospital (Due March 2022) and Mayfield Medical Centre - Brixham Hospital (Due March 2022) which from March 2022 will have a total capacity for 15,919 patients.
3. The current patient list size is 19,122 which is already over capacity by 3,203 patients or at 120% of capacity.
4. The increased population from this development = 289
  - a. No of dwellings x Average occupancy rate = population increase
  - b.  $133 \times 2.17 = 289$
5. The new GP List size will be 19,411 which is over capacity by 3,492
  - a. Current GP patient list + Population increase = Expected patient list size
  - b.  $19,122 + 289 = 19,411$  (3,492 over capacity)
  - c. *If expected patient list size is within the existing capacity, a contribution is not required, otherwise continue to step 6*
6. Additional space required = 23.09m<sup>2</sup>
  - a. The expected m<sup>2</sup> per patient, for this size practice = 0.08m<sup>2</sup>
  - b. Population increase x space requirement per patient = total space (m<sup>2</sup>) required

c.  $289 \times 0.08 = 23.09m^2$

7. Total contribution required = **£73,884**

a. Total space (m<sup>2</sup>) required x premises cost = final contribution calculation

b.  $23.09m^2 \times £3,200 = £73,884$  (£556 per dwelling).

South West Water - Clean Potable Water - South West Water is able to provide clean potable water services from the existing public water main for the above proposal. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network. Foul Sewerage Services - South West Water is able to provide foul sewerage services from the existing public foul or combined sewer in the vicinity of the site. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network. The applicant can apply to South West Water for clarification of the point of connection for either clean potable water services and/or foul sewerage services.

The applicant should demonstrate to the LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable): 1. Discharge into the ground (infiltration); or where not reasonably practicable, 2. Discharge to a surface waterbody; or where not reasonably practicable, 3. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable, 4. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation) Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy.

Devon Archaeology - The proposal is a large development sited in an area of archaeological potential. The Devon and Torbay HER records finds of prehistoric and Romano-British date in the wider area, indicating reasonable potential for widespread settlement activity. Although the submitted geophysical survey does not

identify any specific archaeological features, there is a lot of modern disturbance from use as a camp site that may be obscuring earlier evidence.

As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits associated with early settlement activity. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

I recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

*'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.'*

Reason

*'To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2018), that an appropriate record is made of archaeological evidence that may be affected by the development'*

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

A suitable programme of work would take the form of a staged programme of archaeological works, commencing with either the excavation of a series of evaluative trenches or the archaeological monitoring of initial groundworks (e.g. the principal access roads) to determine the presence and significance of any heritage assets with archaeological interest that will be affected by the development. Based on the results of this initial stage of works the requirement and scope of any further archaeological mitigation can be determined and implemented either in advance of or during construction works. This archaeological mitigation work may take the form of full area excavation in advance of groundworks or the monitoring and recording of groundworks associated with the construction of the proposed development to allow for the identification, investigation and recording of any exposed archaeological or artefactual deposits. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

Housing Delivery Officer – The housing delivery officer supports the provision of 30% affordable By providing 40 affordable units (N.B. the revised number of overall units has reduces to 130 and the number of affordable units has now been amended to 39) on this scheme this will go some way to help those in need of social housing in Brixham and the wider Torbay.

*The mix of the wider site and affordable units is shown below:*

<i>Development mix</i>	<i>Affordable mix (proportionate to site)</i>	<i>Affordable mix that is being proposed</i>
<i>1 bed x 9</i>	<i>3</i>	<i>7</i>
<i>2 bed x 57</i>	<i>17</i>	<i>25</i>

3 bed x 50	15	6
4 bed x 16	5	2

*We would like if possible, a discussion around the proposed affordable mix. We ask that affordable units provided are proportionate to the site as a whole and so would like to see the number of 2 bed units reduced slightly to accommodate a slightly higher number of larger 3 and 4 bed family homes, whilst there is a large number on the waiting list for 1 and 2 beds there is also a real need for larger 3 and 4 bed family homes.*

*The tenure mix to be split evenly between 1/3 SR. 1/3 AR and 1/3 SO.*

*As part of the affordable units we would also expect to see 2 wheelchair adapted units and would ask that these are provided as ground floor accommodation e.g. bungalow or flat rather than a house over two floors and so it would be helpful to have this information and also the layouts of these units once available. Unit size to be agreed but to be provided as a SR unit.*

*We look forward to seeing the location of the affordable units and want to remind the applicant that we ask that the affordable units are pepper potted on the site rather than one location.*

*Torbay Councils Highways Consultant - A previous Highway Authority response (ref. 17th February 2022) was prepared by Torbay Council and should be read in conjunction with this document. The previous response concluded by requesting the following additional information from the applicant*

- o The applicant will be required to undertake a Road Safety Audit (RSA) Stage 1 at the following junctions:*
- o St Mary's Road / Springdale Close; and*
- o Upton Manor Road / Castor Road / St Mary's Close.*
- o The road layout should provide for adopted highway up to the (eastern) boundary with no ransom;*
- o An update of the refuse vehicle swept path analysis as per comments in Section 6;*
- o Submission of a swept path analysis of an emergency service vehicle accessing and egressing the site;*
- o The applicant will be required to ensure that the private drives that serve over five dwellings are designed to an adoptable standard and identified on updated site layout plans;*
- o Completion of a Junctions 10 PICADY assessment of the proposed site accesses using traffic flows associated with the robust assessment of removing the Upton Manor Campsite trip generation; and*
- o A form of gateway/street barrier would need to be provided at the connection between the footway provided behind the hedge bank (to the east of the main access) and St Mary's Road.*

*The applicant should note that a Construction Traffic Management Plan (CTMP) would be required to be submitted and approved by the local highway authority. Additionally, the applicant should note that S106 Sustainable Transport Contributions are likely to be required in accordance with the Planning Contributions SPD towards sustainable transport measures.*

*The applicant has submitted additional information (received 18th May 2022) to address the above requests in which this response will review.*

#### **ROAD SAFETY AUDIT**

*The applicant has submitted an RSA (ref. C20019-ADV-RP-RSA-1005(A)) for the locations specified within the previous Highway Authority response. Whilst the RSA did not identify any issues with the submitted proposed drawings, a number of issues were raised regarding the existing highway network surrounding the site.*

*The RSA included issues relating to pedestrian crossings / visibility issues identified as being outside the scope of works. However, it is considered that these issues*

*relate to operation of the site access and therefore should be reviewed in further detail. The applicant will be required to submit a Designer's Response to respond to these issues and identify how the highlighted issues within the RSA will be resolved.*

#### **ADOPTED HIGHWAY**

*The applicant has submitted a Highway Adoption Plan (ref.C20019 -T001) as part of the updated Transport Assessment. The Plan illustrates accesses, which serve more than five dwellings, as being unadopted. The applicant should note that, as outlined within the Torbay Council Highways Design Guide, the Highway Authority will seek to adopt accesses that serve more than five dwellings. The applicant will be required to amend the plan to indicate these areas as being offered for adoption.*

*The applicant should note that Torbay Council refuse vehicles will not service unadopted dwellings located off unadopted highway.*

#### **REFUSE VEHICLE SWEPT PATH ANALYSIS**

*The applicant has submitted a swept path analysis (ref. C20019-SPA001-B) of a refuse vehicle manoeuvring within the proposed site layout. The swept path analysis, as mentioned within the previous response from the Highway Authority, illustrates a refuse vehicle needing to reverse around a corner within the internal site layout which has raised concerns in relation to the impact upon vehicle and pedestrian safety. As previously mentioned, the applicant will be required to provide sufficient turning head space within the site layout to enable refuse vehicles access and egress the site, and internal site movements, in a forward gear. This is in the interest of Highway Safety.*

#### **PRIVATE DRIVES – ADOPTABLE STANDARD**

*As referred to in Section 3 of this response, the applicant will be required to amend the Highway Adoption Plan to illustrate accesses that serve over five dwellings as being offered for adoption by the Highway Authority.*

#### **SITE ACCESS JUNCTION ASSESSMENT**

*The applicant has created a PICADY model of the proposed site access and has undertaken a junction capacity assessment for a 2025 future year scenario. This*



*assessment has identified a maximum RFC of 0.05. The junction capacity assessment is considered acceptable.*

#### **GATEWAY / STREET BARRIER CONNECTION**

*The applicant does not appear to have provided a gateway or street barrier at the connection between the footway behind the hedge bank (to the east of the main access) and St Mary's Road. The applicant will be required to provide this in the interest of highway safety.*

#### **CONSTRUCTION TRAFFIC MANAGEMENT PLAN**

*The applicant has submitted a Construction Traffic Management Plan (CTMP) for the proposed development. The applicant has stated that deliveries for the site will adopt a 'just-in-time' arrangement with deliveries being provided specific time windows for arrival in order to minimise queuing onto the highway. All loading and unloading will be undertaken within the site boundary with wheel washing facilities also provided to ensure that dust and debris is not transported from the site onto the highway network.*

*The submitted CTMP is considered acceptable.*

#### **SUSTAINABLE TRANSPORT CONTRIBUTIONS**

*The Local Highway Authority will seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD (<https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/>) and Table 4.3. For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.*

#### **CONCLUSION**

*Based upon the information submitted by the applicant at the time of writing, the Highway Authority recommends refusal for the proposed development. This is due to Highway Safety concerns related to the lack of a gateway/street barrier at the*

*connection between the footway provided behind the hedge bank (to the east of the main access) and St Mary's Road. There are additional concerns in relation to how the site will be serviced safely by refuse vehicles as there are no turning heads present within the site layout which is resulting in refuse vehicles reversing around junction corners. This is creating concern in relation to the safety of pedestrians, cyclists and vehicles within the site layout. The RSA also identified concerns in relation to pedestrian access and visibility splays within the wider highway network which the applicant has not addressed.*

*Additionally, the applicant has not clarified that access roads that serve more than five dwellings will be offered for adoption by the Highway Authority as stated within the Torbay Council Highways Design Guide.*

*To enable the progression of further discussion for the Planning Application, the applicant would be required to submit the following further information:*

- o The applicant will be required to submit a Designer's Response to respond to these issues and identify how the highlighted issues within the RSA will be resolved;*
- o The applicant will be required to amend the Highway Adoption Plan to indicate all areas than serve more than five dwellings as being offered for adoption;*
- o Provide sufficient turning heads on site to enable refuse vehicle to safely access and egress all areas of the site in a forward gear in the interest of highway safety;*
- and*
- o A form of gateway/street barrier would need to be provided at the connection between the footway provided behind the hedge bank (to the east of the main access) and St Mary's Road.*

*If the Highway Authority subsequently removes their objection, then it would recommend a condition which requires highway details submitted as part of a Reserved Matters application which must indicate that the highways accord with adoptable standards and an informative which states that the Highway Authority intends to serve an Advance Payments Code notice on receipt of Building Regulations plans in order to ensure that the road is constructed to adoptable standards.*

## **Key Issues/Material Considerations**

### Planning Officer Assessment

1. Principle of Development
2. Design, Layout and Visual Impact (including the impact upon the AONB)
3. Impact on Residential Amenity.
4. Impact on Highway Safety.
5. Ecology and Biodiversity
6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change

### **1. Principle of Development**

The far west of the site is allocated in the Brixham Peninsula Neighbourhood Plan (BPNP) as a housing site for 25 units (St. Mary's/Old Dairy) which covers the area of the existing buildings north and south of St. Mary's Road. The buildings currently in this location have no constraints with regards to their retention and the principle of meeting the BPNP allocation of 25 units is considered to be acceptable. The layout however shows 35 units in this location.

The remainder of the site was rejected as a potential housing site by the Brixham Neighbourhood Forum in 2017 as part of their Housing Site Assessment and is designated within the Area of Outstanding Natural Beauty (AONB). The site is also designated as countryside zone under Policy C1 of the Torbay Local Plan. The site is within a Greater Horseshoe Bat (GHB) radio tracked flight path and sustenance zone as well as a potential wintering area for Cirl Buntings.

Policy E1 of the BPNP states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced and new development will need to respect these qualities and wherever possible enhance them.

In accordance with paragraph 176 of the NPPF, this Policy requires development within or impacting on the AONB to demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the National Planning Policy Framework. This policy also advises

that development should not harm protected landscape characteristics including dark night skies and tranquillity.

In policy terms the AONB has the same level of protection as a national park. Paragraph 177 provides a detailed test for considering applications for development within AONBs:

*177. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development (footnote 60) other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:*

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*

Policy E2 (Settlement Boundaries) states that development outside settlement boundaries will need to meet the criteria in Torbay Local Plan Policy C1.

Policy C1 of the Local Plan and E2 of the BPNP state that outside settlement boundaries, as is the case for the majority of this site, the following forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment:

1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3;
2. Development required for forestry, horticulture or agriculture;
3. Touring caravans and tents;
4. Tourist facilities appropriate to the rural area;

5. Development associated with outdoor sport and recreation appropriate in a rural area;
6. Sensitive conversion, alteration and extension of existing buildings;
7. Essential improvements to the highway network; and
8. Appropriate renewable energy development.

The proposed development outside of the BPNP allocation does not meet the above criteria and is therefore contrary to Policy C1 of the Local Plan and Policy E2 of the BPNP.

Policy SS8 of the Local Plan states that development within the AONB the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest.

The policy goes on to advise that planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated.

SDB1 of the Brixham Peninsula Neighbourhood Plan (BPNP) advises that Brixham is expected to provide 660 new homes over the plan period but that this should be done without prejudicing the integrity of the AONB. Policy SDB3 compounds this by stating that the AONB should be conserved and enhanced to protect its intrinsic landscape and biodiversity value and for recreational and tourism purposes.

The Council is unable to demonstrate a five year housing land supply, and the Neighbourhood Plan came into force more than 2 years ago. On this basis the policies which are most important for determining the application in both the Local Plan and the BPNP must be deemed as being out of date according to the NPPF. However, the Local Plan's policies were reviewed by the Council in December 2020 and found to be generally in accordance with the NPPF in other matters than housing land supply. "Out of date" policies are capable of still carrying significant weight especially

when they are consistent with wider government policy such as the NPPF. It should also be noted that although there is a Torbay wide shortfall in housing delivery, Brixham has to date exceeded its requirement.

With regards to the Presumption in Favour of Sustainable Development in NPPF, paragraph 11 means granting permission unless:

- (i) the application of policies in the NPPF that protect areas or assets of particular importance (this includes the policies relating to an Area of Outstanding Natural Beauty) provides a clear reason for refusing the development proposed; or
- (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The overriding policy intent in the Local Plan BPNP and the NPPF points towards protecting the AONB and providing quality housing in sustainable locations.

This position is however subject to wider policy considerations that are relevant to the development proposal, the forthcoming sections of the report will discuss the impact of the proposal on the AONB and whether there are exceptional circumstances to justify major development in the AONB.

### **Sustainability of Location**

Policy SS11 of the Torbay Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location.

Policy T1 of the BPNP advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

It is considered that the sustainable walking distance from a residential dwelling:

- to a bus stop is 400m,
- to the nearest local convenience is 800m and,
- to the nearest primary school is 800m

The submitted design and access statement advises that Brixham town centre is 1.3km to the north of the site. The closest convenience store is on Castor Road which is 640m to the north and the closest primary school is Eden Park which is 1.1km to the north/north-west. Brixham Hospital is just under 1km to the north.

Bus stops are situated within 100m of the existing access point onto St Mary's Road at the entrance to the South Bay Holiday Park with additional bus stops located approximately 200m to the west (Springdale Close), approximately 250m to the west (Castor Road) and approximately 370m to the northeast (St Mary's Hill).

The location of the site to existing bus stops is considered to be suitable. However, there are not continuous footpaths between the site and the other amenities above and highways have raised safety concerns with regards to footpaths and their relationship with internal roads. The result is likely to be a development which is over reliant on journeys by private cars rather than more sustainable forms of transport and cannot therefore be considered to be a sustainable development. It is therefore considered that there is conflict with Policies SS1 of the Local Plan and T1 of the BPNP.

## **2. Visual Impact (including the impact on the AONB), Design, layout and Landscape and AONB impact**

### **Landscape Impact**

The application is accompanied by an Environmental Statement which includes a Landscape Visual Impact Assessment (LVIA). The LVIA has been reviewed by the Councils Landscape consultant and the AONB Unit. Subsequently further LVIA

information was submitted, and additional comments have been received from the Councils Landscape consultant.

Key aspects of the comments of the Council's Landscape consultant (DCC) are as follows:

Overall, the further visual assessment information received, serves to reinforce the original case for refusal on grounds that new housing and a widened section of St Mary's Road with pavements would effectively extend the town of Brixham into the South Devon AONB and result in the permanent and irreversible physical loss of part of this Nationally valued and protected landscape. Whilst the retention and biodiversity enhancement of the southern field is welcome, this should not be at the expense of an overall negative impact on the AONB arising from urban development. This would be contrary to the purpose of designation - to conserve and enhance natural beauty - and contrary to National and Local Plan policy. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme.

The LVIA text has not been amended and therefore it is considered that its conclusions cannot be fully relied upon to inform planning decisions. The LVIA does not fully consider effects of the proposals on the special qualities and valued features of the AONB. It underplays the significance of effects, judging 'moderate adverse effects to be 'not significant'. It is acknowledged that the landscape's susceptibility to change is compromised by the urban influences of the site context, but the site remains within a Nationally protected landscape which makes it of the highest value and therefore of high sensitivity to such a change.

The Environmental Statement should include consideration of alternative sites outside the Nationally protected landscape that could meet the local housing need, and why discounted, including consideration of comparative landscape and visual effects. This information has not been submitted.

A new viewpoint looking east from Upton Manor Park, Junction with St Mary's Lane has been provided (VP 17). This meets requirements of the request resulting from



the original consultation response as it conveys the rural character of the lane and a 'gateway' into a more relaxed rural AONB very well. However, whilst the accompanying photowire image indicates the location and form of the proposed development, it does not convey the degree of harm to the rural character as a fully rendered photomontage would.

As part of the initial consultation response the Councils Landscape consultant (DCC) requested a Hedgerow Removal Plan which has now been submitted (Drg. No. LHC-00-00-DR-UD-L01.07 Rev P2). The proposal on the far western boundary now appears to be replace the existing stone wall boundary with a single species hedge. This is currently inconsistent with the Landscape Strategy (Drg ending UD-L01.03 Rev P3), which would require updating. The stone walls here contribute positively to the traditional rural character of the street scene as do the buildings. Their loss would be regrettable. The plan lacks detail on which hedgerows are assessed as 'Important Hedgerows' under the Hedgerow Regulations.

Two new viewpoints and associated visualisations were requested as follows:

- a) At a point between VPs 13a and 13b that shows the character and appearance of the farm buildings on both sides of the road together with the Devon hedge on the north side;
  
- b) To convey the view looking north across the site towards Brixham with the church as a distinct landmark, which is obtained when descending towards St Mary's Lane from the entrance of the holiday park.

In terms of a), a suitable viewpoint photo has not been provided. Photoviewpoint 18 (view west along St Mary's Road) is not located to convey the requested context of farm buildings and should have been taken further along the lane to the west.

In terms of b), a new viewpoint 16 has been provided that satisfies this request. The photowire visualisation of viewpoint 16 indicates that the proposed housing would extend above the distant skyline, obscuring distant panoramic views across the town of Brixham from this viewpoint. The rural character of St Mary's lane would be eroded by the presence of built urban development in the field to the north. It is

acknowledged that caravans occupy the field in the summer, although no views demonstrating this have been provided that would allow comparison with this visualisation. The height and density of caravans are likely less than the proposed housing and are in any case temporary/seasonal.

The original consultation response from the Council's Landscape consultant (DCC) requested that VP11 be re-taken further along the road where a view of the full horizontal extent of the site is afforded with a Type 4 wireline visualisation to be provided.

This request has not been met. The additional information uses the same viewpoint and the effect of the development on the views of the green hill backdrop of the AONB remains uncertain. An accurate Type 4 visualisation was requested but this is not forthcoming. It is likely that views in the same direction afforded further down Metherell Avenue would enjoy the green-hill backdrop of the AONB and a photowire may indicate that the proposed development would fully obscure this. This remains uncertain in the absence of reliable evidence.

These views are supported by the South Devon AONB Unit who have commented as follows:

- The proposal does not conserve and enhance the natural beauty of the South Devon Area of Outstanding Natural Beauty (AONB), would compromise town and countryside transition and result in the loss of key traditional features, harmful to the special and distinctive landscape qualities of the South Devon AONB, contrary to the principal material protected landscape policies; and
- It is considered that there are no exceptional circumstances in the public interest that justify this proposal.

The proposal fails the relevant principal policy tests relating to protected landscapes contained in the NPPF, Torbay Local Plan policies SS8 (Natural Environment), C1 (Countryside and the Rural Economy) SDB3 (Brixham Urban Fringe AONB), Brixham Neighbourhood Plan Policies E1 (Landscape Beauty and Protected Areas) and E2 (Settlement Boundaries) the Torbay Landscape Character Assessment

landscape strategy, the South Devon AONB Management Plan and AONB Planning Guidance.

Policy BH5 of the BPNP refers to the *Landscape Character Assessment of Torbay* and the *Brixham Urban Fringe Landscape Study* when considering the character of the site area. The site is described in the *Brixham Urban Fringe Landscape Study* as *Landscape Component 11: John Fowler's/South Bay Camp and Upton Manor Farm*. The development/design considerations for this site advise that it is not suitable for development and that should the existing uses on site be no longer viable then it should revert to greenfield uses.

The *Landscape Character Assessment of Torbay* and the *Brixham Urban Fringe Landscape Study* notes that the site is prominent and highly sensitive and, as previously stated, unsuitable for development in terms of its impact on the landscape and AONB.

The Council's Landscape consultant has advised that the updates to the plans and visualisations in the original LVIA and additional information has only partially met the level of information requested. Some viewpoint locations and visualisation types fail to fully convey the likely nature and extent of effects on the AONB's rural character and quality of views enjoyed. The Council's Landscape consultant states that the further visual assessment information received reinforces their original recommendation that the proposal be refused. As previously noted, the reasons for this are that the 'exceptional circumstances' for this major development in the South Devon AONB have not been demonstrated. The applicant has failed to assess the scope to meet the housing need outside this Nationally designated and protected landscape which is likely to have found sites which would not have an impact on the AONB. Therefore, there are clear grounds for refusal taking into account NPPF 177 and footnote 60.

The new housing and a widened section of St Mary's Road with pavements would effectively extend the town of Brixham into the South Devon AONB and result in the permanent and irreversible physical loss of part of this Nationally valued and protected landscape. This would be contrary to the purpose of designation which is

to conserve and enhance natural beauty of the area. Concomitantly the proposal would be contrary to National and Local Plan policy. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme.

As such the proposal is contrary to Policies DE1, SS8, SBD1, SDB3 of the Local Plan, Policy E1 & E2 of the BPNP and advice contained within the NPPF, most notably paragraph 176 and 177.

### **Design and Layout**

Nationally achieving good design is a central thread within government guidance and Part 12 of the NPPF (Achieving well-designed places) offers key guidance. Paras 126, 127, 130, and 134 are particularly relevant and accumulatively guide that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and the importance of design being sympathetic to local character (built environment and landscape setting). Para 134 advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This is echoed in the supporting text of the Brixham Peninsula Neighbourhood Plan.

Policy DE1 (Design) of the Torbay Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

With regards to the proposals within the BPNP allocation, this land is within the allocated countryside zone. The BPNP allocates the site for 25 units of accommodation and the part of the site to the north of St Mary's Road includes some historic buildings and walls. These may be considered to be undesignated heritage assets, however it is considered that their demolition would be difficult to resist particularly as the BPNP does not appear to suggest the housing allocation on the site should be through the conversion of existing buildings on site.

As appearance is not part of this Outline Application, it is not possible to comment on the design of the 35 units in this location. The scale and layout of the development does make up part of this application and can be considered. The removal of two storey buildings and replacement with 3 and 2.5 storey buildings could be acceptable in this location having regard to existing building heights however the density of the development is much greater than envisaged in the allocation.

The scale of the development proposed in the allocated site that lies to the south of St. Mary's Road would appear to be excessively bulky, particularly given that this acts as the gateway to the AONB. The overall increase in scale and density to the north and south of St. Mary's Road here is not considered to be a sensitive addition to the character and appearance of the area. A development which accords with the BPNP allocation of 25 units of accommodation would be likely to deliver a more appropriate and softer form of development here which would have less impact on the wider landscape character.

The additional 95 dwellings outside of the BPNP allocation are within the AONB. As noted earlier in this report, there are Local and Neighbourhood Plan Policies (E1, SS8, SBD1, SDB3) which state that the natural beauty, tranquillity and landscape character of the AONB should be retained and wherever possible, enhanced. In the exceptional circumstances where major development is to be permitted within the AONB the density, scale and layout of the development needs to respect the special landscape quality and character of the AONB, which this proposal does not for the following reasons:

Twenty of the dwellings have garden areas which are below the required 55msq in the Local Plan demonstrating that the number of dwellings in this location represent an overdevelopment of the site in an area where the expectation would be for low density development.

The layout is substantially dominated by the road network with proportions of parking located to the front of dwellings resulting in an inappropriate urban scale and character of development.

The mix of detached, semi-detached and terraced properties accords with the wider urban grain of the area, internally there are some areas to provide trees and vegetation within the streetscene and although the appearance/design is not finalised it would appear that there are opportunities to allow some aspects of good design insofar as buildings orientated to turn corners. Notwithstanding this, the overall legibility of the scheme is relatively poor with a number of the internal roads terminating at dead ends without viewpoints rather than providing connections to the wider area or creating well-defined edges to the development.

Widening of St Marys Road and introduction of pavements will urbanise the rural character of the area, adversely impacting on the character of this part of the AONB.

In conclusion the development fails to moderate its impact on the AONB and is therefore contrary to Policies DE1, SS8, SBD1, SDB3 of the Local Plan, Policy E1 of the BPNP and advice contained within the NPPF, most notably paragraphs 130,176 and 177.

#### **Heritage Impact.**

There is a requirement to pay special attention to the desirability of preserving or enhancing the setting of listed buildings, and in terms of this development there is a Grade II Listed Building some 30m to the north-west of the site. Due to existing intervening trees, which aid in shielding the visual impact of the development, the proposal is likely to have a limited impact on the setting of the Listed Building. The proposal is considered to accord with Policy HE1 of the Local Plan.

#### **Impact on Trees.**

The Green Infrastructure Manager has advised that the site is not sustainable from an arboricultural perspective owing to the missing information within the tree constraints report EV-3528-TCR, in conjunction with the pressure on the Torbay Council owned tree from construction traffic. The proposal is therefore considered contrary to Policy C4 of the Torbay Local Plan and para 131 of the NPPF.

### **3. Impact on Residential Amenity**

Policy DE3 of the Local Plan requires that new residential development provides a good level of amenity and that units provide adequate floor space to achieve a pleasant and healthy environment. Policy DE3 sets out guidelines for minimum floor space standards for new dwellings and apartments, which reflect the Government's National Space Standards.

The proposals will comprise a variety of dwelling types and sizes to offer a broad range of accommodation, ranging from 1 to 4 bedroom homes. The building heights of the proposed dwellings will be 2-3 storeys. The 3 storey dwellings are to provide the apartment accommodation and will be sited on the previously developed part of the site which is allocated for housing in the BPNP and currently consists of industrial buildings.

Twenty of the dwellings have gardens of less than the 55sqm required by the Local Plan, albeit some are only very slightly less. This is also somewhat mitigated for by the provision/retention of open space to the south-east and north-east of the site as well as the open space beyond but nevertheless is contrary to policy.

In addition to the size of the space the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. Although appearance is not part of the Outline Application, it is considered that there is potential for the proposal to provide suitable levels of light and outlook.

Policy W1 of the Torbay Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. Communal bin storage areas have been provided within bin store areas for the apartments. The proposed bin storage facilities are considered acceptable and compliant with Policy W1.

In terms of the impact on existing neighbouring properties, those to the north on Castor Road and Briseham Road would largely have rear to side and side to side relationships with the proposed dwellings. The closest distance between properties on and off site would be circa 15m, which is generally considered to be an acceptable distance for a side to side relationship. Although it is not known at this

stage what the window layout of the proposed dwellings would be, it is likely that the relationship between properties on the northern boundary of the site would be acceptable given the distances, intervening trees and foliage and the difference in topography.

With regards to the properties to the south and south-west boundary of the site, those on Springdale Close and the property known as Orchard House would be closest to the proposed redevelopment of the existing industrial buildings which are within the BPNP housing allocation.

A three storey building in this location would be likely to have a detrimental impact on the residential amenity of the occupiers of Orchard House. Although this property is set above the existing industrial buildings, an increase in height and intensification of use would be likely to have an overbearing impact and, although the appearance has not been provided as part of this application, there are likely to be windows which would overlook this property.

The properties most effected on Springdale Close would be those which back on to the proposed redeveloped industrial buildings (7-17 Springdale Close). The proposed development would be set further off the rear boundaries of these properties than the existing and there would be more than 20m between the existing and proposed. However, the proposal includes undercroft parking but also parking at the rear which is likely to result in an increase in noise and disturbance through vehicle movements and headlights etc. There is a mitigating factor which is that the existing dwelling are set above the proposed site by several metres.

The BPNP allocates this part of the site and the existing buildings adjacent to the north for 25 units, the application proposes 35 units in this location. Detailed design and appearance do not form part of this application and as such there is insufficient detail to determine whether it would be possible to develop the quantum of housing proposed without adverse impacts on the amenity of properties in Springdale Close and on Orchard House.



In summary, the proposal is deemed to have some conflict with Policy DE3 of the Torbay Local Plan and BH3 of the BPNP.

#### **4. Impact on Highway Safety**

The NPPF guides that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree (Para 110). It also furthers (Para 119) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TA1 of the Torbay Local Plan and advice contained within the NPPF principally seeks to develop a sustainable model of travel. This baseline aspiration is there to try and meet the travel needs of everyone, whilst also reducing the need for travel and thus the environment impact of movement from development.

Policy TA2 of the Torbay Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided.

As previously states, three access points into the site are proposed onto St Mary's Road. The existing access into Upton Manor Campsite will be replaced by a new residential access situated approximately 115m further west providing a 5.5m wide priority junction and footpaths. The existing access points to the western extent of the site are proposed to be redesigned in order to provide two priority junction arrangements to serve the areas of development in these locations. The access at the southern side of St Mary's Road is proposed to provide a 4.8m wide carriageway with 2m footways on either side and provide access to an undercroft parking area.

In order to provide a suitable carriageway width, the existing road will need to be widened from 4.5m to 6.1m (for a length of approx. 180m) which will result in the loss of part of hedgerow on the north side of St Marys Road, this is proposed to be replaced with new hedgerow planting slightly further to the north of the existing. Pedestrian and cycle access will be available via the newly proposed vehicular access points onto St Mary's Road with footways provided either side of each of the proposed access points.

The Councils Highways Consultant have provided consultation responses to the proposal. The applicant has addressed some of the concerns raised however several issues are still unresolved.

In accordance with previous consultation responses the applicant has submitted a road safety audit (RSA). The RSA identified a number of issues relating to the existing highway network surrounding the site. These includes issues regarding pedestrian crossings and visibility issues which the RSA identified as being 'outside the scope of works.' However, the Councils Highways Consultant considers that these issues relate to the operation of the site access and should be reviewed further and that a Designer's Response should be submitted to resolve the issues highlighted by the RSA.

The revised Transport Assessment submission includes a plan illustrating accesses which serve more than 5 dwellings as being unadopted. The Councils Highways Design Guide states that the Highway Authority will seek to adopt accesses of more than five dwellings, Torbay Council refuse vehicles will not serve unadopted dwelling located off unadopted highway. Policy BH8 of the BPNP also states that access to new housing should comply with relevant adopted standards.

The applicant has submitted a swept path analysis (ref. C20019-SPA001-B) of a refuse vehicle manoeuvring within the proposed site layout. The swept path analysis illustrates a refuse vehicle needing to reverse around a corner within the internal site layout which has raised concerns in relation to the impact upon vehicle and pedestrian safety. Insufficient turning head space has been provided within the site

layout to enable refuse vehicles access and egress the site, and internal site movements, in a forward gear.

The Councils Highways Consultant has advised that the applicant does not appear to have provided a gateway or street barrier at the connection between the footway behind the hedge bank (to the east of the main access) and St Mary's Road.

In conclusion to the above mentioned points, and the information submitted by the applicant at the time of writing, the Councils Highways Consultant and Highway Authority recommends refusal for the proposed development. This recommendation is based on Highway Safety concerns relating to;

- the lack of a gateway/street barrier at the connection between the footway provided behind the hedge bank (to the east of the main access) and St Mary's Road.
- concerns in relation to how the site will be serviced safely by refuse vehicles as there are no turning heads present within the site layout which is resulting in refuse vehicles reversing around junction corners. This is creating concern in relation to the safety of pedestrians, cyclists and vehicles within the site layout. The RSA also identified concerns in relation to pedestrian access and visibility splays within the wider highway network which the applicant has not addressed.
- the applicant has not clarified that access roads that serve more than five dwellings will be offered for adoption by the Highway Authority as stated within the Torbay Council Highways Design Guide.

Appendix F identifies an expected requirement of 1 car parking space per apartment. The guidance cites that parking for visitors should also be provided for flatted development, however there is no guidance on what levels of visitor parking should be provided though. The guidance notes also state that all dwellings should have electric charging points and in flatted development 20% of available spaces should have electric charging points. In addition there should be 10% of spaces suitable for disabled users.

The application proposes two parking spaces per dwelling across the site and one parking space per flat, which equates to a total of 224 car parking spaces, inclusive of garages. Twenty percent of all parking spaces will include electrical charging points.

Each dwelling will have provision for at least two bicycles with the apartments providing storage for one cycle space each.

The proposed provision of parking and cycle storage is considered to be acceptable and meets the requirements of Policy TA3 of the Local Plan. Notwithstanding comments from the Councils Highways Consultant, Appendix F of Policy TA3 requires an electric charging point per house and 20% for flatted developments. The proposal does not accord with this standard however, if the application was to be considered acceptable a condition requiring additional charging points could be added at this stage.

As previously noted, the location of the site to existing bus stops is considered to be suitable. However, there are not continuous footpaths between the site and the other amenities and highways have raised concerns with regards to footpaths within the site. There are no immediate cycle routes close to the site. It is therefore considered that there is conflict with Policies SS1 of the Local Plan and T1 of the BPNP.

Based on the foregoing, the proposal is considered to be contrary to Policy TA2 & SS1 of the Local Plan Policy BH8 & T1 of the BPNP and guidance within the NPPF most notably paragraphs 110 and 112.

## **5. Ecology & Biodiversity**

Policy NC1 of the Torbay Local Plan and guidance within the NPPF seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development.

The site is within a Greater Horseshoe Bat (GHB) radio tracked flight path and sustenance zone as well as a potential wintering area for Cirl Buntings.

Lyme Bay and Torbay SAC is located approximately 0.43km to east of the site and during construction there is potential for impacts on this designated site via pollution impacts. If the application were to be considered acceptable, a condition requiring pollution control measures detailed within a CEMP document would be necessary. Any areas of new development will have their own network and foul drainage from the proposed development, which will connect into the existing foul network. In their consultation response, South West Water (consultation dated 26th May 2022) advised that they had no objection to the proposals, it can be therefore assumed that there is sufficient capacity within the existing foul sewer infrastructure to accommodate the development and that there would be no adverse effect on the SAC as a result of increased demand on the existing sewer network.

In terms of the submitted ecological information, all ecological surveys were undertaken between March and August 2019 (with the exception of cirl bunting surveys undertaken in 2020).

As the application was submitted in July 2021, site visits were completed within 12 months of the application and therefore this is in line with the CIEEM guidelines on the 'Lifespan of Ecological Reports and Surveys (April 2019)'.

In addition, in January 2022 the site was subject to a further walkover survey, which also included an updated badger survey and assessment of the site to support any other protected or notable species. These updated surveys confirmed that there had been no significant changes to the ecological baseline at the site and therefore provides further certainty on the validity of the ES chapter in line with the CIEEM guidance.

Cirl Bunting surveys undertaken 2019 and 2020. One male cirl bunting recorded singing in February 2020. No cirl buntings have been recorded breeding within the application site during the 2019 or 2020 breeding surveys and the habitats are generally sub-optimal for nesting and foraging.

Therefore, it is considered likely the singing male was prospecting for new territory and not using the application site for over wintering or breeding, especially as no

other cirr buntings were recorded at the application site during any of the previous or subsequent surveys and the habitats are sub-optimal.

Furthermore, guidance states that two registrations are required to establish that a breeding pair is present at an application site, unless conditions during other visits were not ideal (RSPB, 2017).

As only one cirr bunting has been registered briefly on one occasion during the end of the wintering surveys and two separate breeding surveys have been undertaken, with all surveys completed during optimum conditions, no breeding pairs are present at the application site

In total 354m of hedgerow will be lost as a result of the development however post-development, 1015m of new hedgerow planting will be provided.

Two badger setts have been recorded at the application site with both deemed active at the time of the most recent badger surveys in December 2019. One badger outlier sett is to be lost to development. The closure of the outlier badger setts will require a licence and appropriate mitigation measures, to be implemented in agreement with Natural England.

Gaps will be incorporated into fences to allow hedgehogs to move freely across the application site.

Thirteen buildings are present on the application site and were all subject to surveys in 2019. Evidence of roosting bats was recorded in five buildings, these roosts would be lost as part of the development and if the application was to be considered acceptable, mitigation would need to be provided via integrated nesting/bat roosting boxes in the building design via a condition at Outline stage with details to be submitted at Reserved Matters stage.

Several mature trees within the application site were identified as having low potential to support roosting bats with cracked limbs and rot holes representing

potential roosting features. The scheme was originally designed to avoid impacting trees with bat roost potential.

The site is within the sustenance zone for the South Hams SAC with respect to Greater Horseshoe Bats. A baseline lighting assessment has been undertaken at the application site and recorded light levels above 0.5lux along much of the southern boundary and along the western section of St Marys Road that is located adjacent to the application site.

It is believed that this scheme will cause damage or disturbance to GHB foraging and commuting habitat and a Likely Significant Effect on the South Hams SAC in the absence of mitigation.

Therefore, an HRA is required to be produced and agreed with Natural England. Additional information with regards to lighting and a bat corridor to the north of the site as well as further details of the proposed biodiversity net gain have been requested in order to allow the LPA to undertake a Habitat Regulation Assessment (HRA). Further information on this will be provided to Members at the committee meeting.

## **6. Flood Risk and Drainage**

The NPPFs key guidance (Para 167) is when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and where appropriate applications should be supported by a site-specific flood-risk assessment. It further states that development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

The flood risk assessment submitted with the application identifies that infiltration testing has been undertaken on the development site and that the use of infiltration drainage is not feasible at this location. As a result, the developer is proposing to discharge surface water run-off from the development at a controlled discharge rate via attenuation systems. The site has been divided into two areas with separate discharges from each area. The primary attenuation system serves the east of the site with a secondary attenuation system serving the west of the site. The controlled discharge rate of both comply with the requirements of the Torbay Critical Drainage Area.

Drawings and hydraulic design for the surface water system serving both areas have been submitted. These designs are based on the current outline layout for the site and these demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 40% for climate change. The Councils Drainage Engineer has confirmed that the method of drainage proposed is acceptable, the proposal therefore complies with Policies ER1 & ER2 of the Local Plan.

South West Water have confirmed that they are able to provide both water and sewage facilities to the site.

## **7. Low Carbon Development and Climate Change**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources. Policy ES1 seeks to ensure that carbon emissions associated with existing buildings (heating, cooling, lighting and energy consumption) are limited.

The submitted Design and Access Statement includes a sustainability section that cites that the strategic approach to the development will be to reduce demand for energy consumption in the first instance and to have fabric first, efficient low energy buildings with sustainable materials. It also advises that the following sustainable specification could be incorporated at the design stage:



- Solar panels
- Timber specification
- Rainwater harvesting
- Ground source heating
- District heating
- High specification installation
- Solar shading
- High specification glazing

The principle of the sustainability approach proposed is acceptable however additional details would need to be conditioned to be submitted at the reserved matters stage to ensure the development is in accordance with Policy SS14 and ES1 of the Torbay Local Plan and advice contained within the NPPF.

### **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

#### **The Economic Role**

Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development.

The applicant has advised that the proposal would result in 240 direct and indirect jobs during the construction phase. Once the dwellings are occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

However, the loss of the land for future tourism related uses is considered to be detrimental to the area and would result in the loss of land which could potentially provide jobs and result in visitors spending money in the local area.

Notwithstanding this, the economic element of sustainable development the balance is considered to be positive.

### **The Social Role**

The proposal would result in some dwellings having undersized gardens and has the potential to have an adverse impact on the occupiers of neighbouring properties.

There would be a detrimental impact on local services i.e. schools, Doctors surgeries etc, however this can be mitigated via S.106 contributions.

However, in terms of the social role, the addition of 130 additional dwellings, 39 of which are affordable houses, weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development, the development of the site within the AONB would result in the permanent loss of an area designated for its landscape quality and tranquillity and impact on the overall landscape quality of the AONB. Great weight should be given to harmful impact on the AONB.

The development would result in biodiversity net gain which is a positive impact.

Having regard to lack of safe pedestrian routes to local facilities the site is likely to be over reliant on travel by private car rather than more sustainable modes of transport which would have a detrimental environmental impact.

It is concluded that the adverse environmental impacts of the development weigh substantially against the development notwithstanding any proposed mitigation.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is not considered to represent sustainable development.

## **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme would provide much needed housing including the benefit of affordable housing which must be given significant weight in the planning balance.

The proposal is a Major Development, Paragraph 177 of the National Planning Policy Framework (NPPF) advises that Planning permission should be refused for major development within the AONB other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

Consideration of such applications should include an assessment of::

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

The Council is unable to demonstrate a five year supply Torbay's current land supply at November 2021 is 2.75 years which is a significant shortfall. However, although there is a Torbay wide shortfall in housing delivery, Brixham has to date exceeded its requirement due to developments at Inglewood (373 houses) Sharkham Village and Wall Park.

The economic benefits of permitting this development which would arise from the construction process and increased spending power from additional residents is marginal considering the loss of tourism from the site. While the site is currently closed as a caravan park it has not been demonstrated that it is not viable for this use.

- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way;

The current application site has been promoted to the Local Plan Update via the Housing and Employment Land Availability Assessment (HELAA). The Upton Manor farm site has been identified in the HELAA as having very significant constraints, and the footnote 7 of the NPPF (which relates to plan making and protection of the AONB) restrictions do apply to plan making.

There are sites outside of the AONB that would be locationally preferable to sites within the AONB. The Local Plan Update will need to assess the accessibility of locations and broader infrastructure and employment issues. Although it is difficult to see how this assessment can be fully carried out outside the Local Plan process, the application site appears to be one which would be unlikely to be designated for housing as part of the Local Plan review.

c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated

As set out throughout this report, the development fails to conserve and enhance the natural beauty of the AONB. The development will result in the total loss of a significant area of the AONB. The impact on the AONB is severe and permanent. The change will be irreversible and the impact on landscape and the AONB is not moderated.

The Council's Landscape Consultant has advised that new housing and a widened section of St Mary's Road with pavements would effectively extend the town of Brixham into the South Devon AONB and that this urbanisation of the area would result in the permanent and irreversible physical loss of part of this Nationally valued and protected landscape.

The South Devon AONB Unit state that the development would compromise town and countryside transition and result in the loss of key traditional features and would be harmful to the special and distinctive landscape qualities of the AONB.

The Devon Wildlife Trust comment that the removal of large sections of the southern boundary hedgerow would detrimentally impact on the rural character of the area and the AONB.

The Landscape Character Assessment of Torbay and the Brixham Urban Fringe Landscape Study notes that the site is prominent and highly sensitive and unsuitable for development in terms of its impact on the landscape and AONB.

Whilst the provision of 130 dwellings 39 of which are to be affordable homes is a benefit of the scheme it is not considered that this would justify the permanent loss of a significant area of AONB and that the 'exceptional circumstances' have not been met.

The significant impact that the permanent loss of an area considered of value enough to be designated as an AONB must, as stated within the NPPF, be given great weight. Whilst the retention and biodiversity enhancement of the southern field is welcome, this should not be at the expense of an overall negative impact on the AONB arising from urban development.

In conclusion the application of policies in the NPPF (in particular Paragraph 177) in relation to the development's impact on the AONB provides a clear reason for refusing the development proposed. Given the irreversible impact the proposal would have on the AONB and the lack of evidence to confirm that the housing need cannot be met outside of the AONB it is not considered that, when taken as whole, the development is in the public interest.

Additional factors such as highways safety, including lack of suitable connectivity to amenities and concerns of overdevelopment result in the proposal being contrary to a number of Local Plan and BPNP Policies as well as advice contained within the NPPF.

Bearing these points in mind, the recommendation for the proposal is one of refusal.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

Local Finance Considerations

S.106 Agreement

The following are to be included in draft Heads of Terms for a legal agreement, which should be completed prior to any planning consent being issued. Triggers and instalments in relation to the proposed financial contributions would be agreed as part of the detailed negotiation of the legal agreement. If Members consider that the application is acceptable is recommended that authority to progress and complete the legal agreement be delegated to officers.

### **Sustainable Transport**

In accordance with Torbay Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD (to open marking housing only) Sustainable Transport obligations should be secured.

### **Public Open Space, Sport and Recreation**

The Planning Contributions and Affordable Housing SPD indicates a development of this scale should secure a LAP and a LEAP. Parameters for the provision and retention of future public play space, which secures appropriate play space for different ages of children, should be secured, including funding mechanisms or public adoption, and dispute mechanisms, along with the provision and maintenance of the public open space, public access routes and allotments.

The Councils Sports Development Officer has provided comments on the level of constitution required to enhance sports facility provision in the Brixham peninsula area to cope with the extra demand created by this development.

### **Education**

Obligations in-line with the adopted SPD should be sought to secure increased school capacity within Torquay, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Lifelong Learning Obligations**

Obligations in-line with the adopted SPD should be sought to secure library improvements within the area, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Waste and Recycling**

Obligations in-line with the SPD should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

### **Affordable Housing**

Affordable housing provision for this development would need to accord with Policy H2 of the Torbay Local Plan. Housing services have viewed the above application and would expect to see 30% affordable housing being provided on the Greenfield element of the site (20 units) and 20% on the Brownfield (6 units) and so a total of 26 affordable units in total.

The affordable housing provision would be split into 1/3 Social Rent, 1/3 Affordable Rent and 1/3 Shared Ownership. The bedroom mix should be proportionate to the site as a whole with a pepper potted approach to the layout and as per section H6 of the Local Plan for a scheme providing 26 affordable units that the provision should also include 1 wheelchair adapted unit.

The applicant has confirmed that they are willing to provide the affordable units required for this application.

Elements of the provision, such as location and mix, to be agreed through the reserved matters stage when the form and layout is progressed beyond the current indicative stage.

### **Ecology**

In-line with the Torbay Local Plan Policy SDB1, a contribution towards mitigating recreational impacts on the South Hams SAC should be secured.

### **NHS**

The site is not allocated in the Development Plan and as such development in this area would be additional to what the NHS is expecting. The Clinical Commissioning Group (CCG) have commented on the application and provided a formula for a S106 contribution utilising the document “Devon Health Contributions Approach: GP Provision document” which was agreed by NHS England and Devon County Council.

### **Conclusions and Reasons for Decision**

Given the foregoing, the overarching Local Plan and Neighbourhood Plan Policies seek to resist the scale of development proposed within the AONB and the recommendation is one of refusal.

The proposal is a Major Development, Paragraph 177 of the National Planning Policy Framework (NPPF) advises that Planning permission should be refused for major development within the AONB.

Although the proposal would provide much needed housing, the applicant has not assessed the scope to meet the housing need outside this Nationally designated and protected landscape. The impact on the AONB has been deemed to be severe and permanent and as a result the site is not considered one suitable for development of the type proposed.

It is not considered necessary to apply the “tilted balance” at 11d)ii because paragraph 11d)i) provides clear reasons for refusal. However as this report identifies and set out in the reasons for refusal the adverse impacts of permitting the



development would significantly and demonstrably outweigh any benefits, when assessed against the policies in this Framework taken as a whole

### **Officer Recommendation**

Refusal.

### **Reasons for Refusal**

#### **AONB Impact**

This proposal for major development would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon AONB that is not mitigated by exceptional circumstances in the public interest. The proposal is therefore contrary to Policies SS8, C1, SDB1, SDB3 and DE1 of the Torbay Local Plan, 2015 and Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and the National Planning Policy Framework, 2021 in particular paragraphs 176 and 177.

#### **Landscape**

The site contains distinctive landscape features and characteristics, some of which would be permanently lost or degraded and the adverse landscape effects are considered to be significant and adverse and irreversible. Requests for further information have only partly been met and insufficient information has been provided to ensure that the submitted visualisations in the LVIA can be relied upon as reasonably accurate. The LVIA does not fully consider effects of the proposals on the special qualities and valued features of the AONB and its conclusions therefor cannot be fully relied upon. As such the proposed development is contrary to C1 of the Torbay Local Plan, 2015 and Policy E1 of the BPNP and para 174 of the NPPF.

#### **Highways**

The layout does not enable refuse vehicles safe or acceptable access and egress to and within the site. There is no gateway or street barrier at the connection between the footway behind the hedge bank (to the east of the main access) and St Mary's Road. In addition insufficient information has been submitted to confirm that the proposal would not have an impact on highways safety for all road users including cyclists and pedestrians (in particular the RSA identifies concerns in relation to

pedestrian access and visibility splays within the wider highway network which have not been addressed) nor as to whether the proposal would provide internal roads which would be to the level of quality suitable for the Local Highways Department to adopt, or for the residential units to be served by refuse vehicles. As such the proposal is considered to be contrary to Policy TA2 of the Torbay Local Plan, 2015, Policy BH8 of the Brixham Peninsular Neighbourhood Plan and guidance within the NPPF in particular paragraphs 8, 130,104, and 110

### **Sustainability**

The lack of safe pedestrian access to local facilities and services is likely to result in a development over-reliant on the private car. The development will result in adverse environmental and social impacts, it fails to provide quality housing in a sustainable location, it is not well connected and accessible and does not include safe walking and cycling access. The number of dwellings in this location represent an overdevelopment of the site and the undersized gardens will inevitably result in increased footfall and pressure to the AONB and wider Special Area of Conservation. The development therefore does not accord with the development plan when considered as a whole and material considerations do not indicate that a decision should be made counter to the development plan. This conclusion is made in accordance with guidance contained within the NPPF, notably Paras. 11, 12 and 14. As such it is considered that the development presents a clear level of conflict with Policies SS1 and SS11 of the Torbay Local Plan ,2015 and Policy T1 of the Brixham Peninsular Neighbourhood Plan.

### **Design**

The number of dwellings in this location represents an overdevelopment of the site. The increase in scale to the north and south of St. Mary's Road here is not considered to be a sensitive addition to the character and appearance of the area. The layout is substantially dominated by the road network with proportions of parking located to the front of dwellings emphasising the urban character of the development contrary to Policies C1, SDB1, SDB3, DE1 and DE3 of the Torbay Local Plan, Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and contrary to the National Planning Policy Framework, 2021, in particular paragraphs 130 and 176.

## **Trees**

Insufficient arboricultural information has been submitted to confirm that the proposal would not have a significant impact on the current trees on site and those potentially impacted by the development off site which contribute to the surrounding streetscene character. As such the proposed development is contrary to Policy C4 of the Torbay Local Plan, 2015 and the National Planning Policy Framework, 2021 in particular paragraph 131.

## **Lack of s106**

The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary provision of sustainable development, Public Open Space, Sport and Recreation, ecological mitigation, Education. Lifelong Learning Obligations, waste disposal and health contributions, provision and maintenance of the public open space, play areas, public access routes and allotments, and affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.

## **Relevant Policies**

SS3 - Presumption in favour of sustainable development

SS8 - Natural Environment

SS10 - Conservation and Historic Environment

SS11 - Sustainable Communities Strategy

SS12 - Housing

SS13 - Five Year Housing Land Supply

SS14 - Low Carbon Development and Adaptation to Climate Change

W1 - Waste management facilities

W2 - Waste audit for major and significant waste generating developments

W3 - Existing waste management facilities in Torbay

TA1 - Transport and accessibility

TA2 - Development access

TA3 – Parking Requirement

DE1 - Design

DE3 - Development Amenity

DE4 – Building Heights

ER1 - Flood Risk  
ER2 - Water Management  
ES1 – Energy  
C1 – Countryside Zone  
C4 - Trees, hedgerows and natural landscape features  
NC1 - Biodiversity and Geodiversity  
H1 - Applications for new homes  
H2 - Affordable Housing  
SC1 - Healthy Bay  
HE1 – Listed Buildings  
SDB1 - Brixham strategic policy area  
SDB3 - Brixham Urban Fringe and Area of Outstanding Natural Beauty  
BH3 - Delivery of New Homes  
BH8 – Access to New Dwellings  
E1 – T1Landscape beauty and protected areas  
E2 – Settlement Boundaries